TRANSCRIPT OF RECORD.

145-285

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 858. ~~531~~ 181

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, THE NEW YORK LIFE INSURANCE COMPANY, AND THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT (CONSOLIDATED), PLAINTIFFS IN ERROR,

vs.

SALLIE E. HILLMON.

No. 859. ~~532~~ 182

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, PLAINTIFF IN ERROR,

vs.

SALLIE E. HILLMON.

No. 860. ~~533~~ 183

THE NEW YORK LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

SALLIE E. HILLMON.

No. 861. ~~534~~ 184

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, PLAINTIFF IN ERROR,

vs.

SALLIE E. HILLMON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED OCTOBER 8, 1888.

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vs.

SALLIE E. HILLMON.

No. 859.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, PLAINTIFF IN ERROR,

vs.

SALLIE E. HILLMON.

No. 860.

THE NEW YORK LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

SALLIE E. HILLMON.

No. 861.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, PLAINTIFF IN ERROR,

vs.

SALLIE E. HILLMON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

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1 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant. } Petition.

The said Sallie E. Hillmon, who is a citizen of the State of Kansas and the plaintiff in this the above-entitled action, complains of The Mutual Life Insurance Company of New York, the defendant herein; which said defendant is a citizen of the State of New York and is and was at the several times herein mentioned an existing corporation, with power and authority, among other things, to contract as such and to make and enter into such contracts and agreements as are hereinafter mentioned, and to make and execute the policy of insurance hereinafter mentioned; which said corporation was created and organized and exists in said — of New York and under and by virtue of the laws thereof.

And said plaintiff further avers that said defendant heretofore, to wit, on the tenth day of December, A. D. 1878, by Robert A. Granniss, a vice-president thereof, and Isaac F. Lloyd, its secretary, its agents in that behalf, by it thereunto duly appointed and authorized, for certain considerations and premiums to it paid and to be paid, made, executed, and delivered to said plaintiff its certain written instrument of that date, commonly called a policy of insurance, of which said policy a copy is herewith filed, hereto attached, marked "Exhibit No. 1," and made part hereof, except that there is not any copy of the provisions and requirements printed on the back of said policy hereto attached, but *and* said plaintiff avers that there is nothing on the back of said policy material to this case.

2 And said plaintiff further avers that the John W. Hillmon in said policy mentioned was at the time of the execution thereof and until his death the husband of this plaintiff, and said plaintiff then had and until the death of said John W. Hillmon continued to have a valuable and insurable interest in his life.

And said plaintiff further avers that heretofore, to wit, on the tenth day of December, A. D. 1878, and at the same time when said policy was made and executed, said defendant, by F. S. Winston, its president, its agent in that behalf, by it thereunto duly appointed and authorized, made, executed, and delivered to said plaintiff its certain written instrument, its receipt, signed by its said president, of and for the first premium and sum of one hundred and twenty-one and $\frac{40}{100}$ dollars ($121.40) in said policy mentioned, which was then duly paid to said defendant.

And said plaintiff further avers that said defendant did in and by said policy of insurance insure the life of said John W. Hillmon, for the term of his natural life, in the sum and to the amount of ten thousand dollars ($10,000.00), for the use of said plaintiff—that

is, said defendant in and by said policy promised to pay to said plaintiff, for her sole use, if living, in conformity with the statute, and, if not living, to the children of said plaintiff and John W. Hillmon or their guardian, for their use, the sum of ten thousand dollars (any indebtedness to the defendant on account of the contract shown by said policy to be first deducted therefrom), at the office of said defendant, in the city of New York, within sixty days after notice and the proofs by that policy required of the death of said John W. Hillmon should have been furnished to said company at its said office, as shown by that policy, and said copy thereof is referred to for a more full description of the same.

3 And said plaintiff further avers that afterwards and heretofore, to wit, on the seventeenth day of March, A. D. 1879, said John W. Hillmon died and his natural life and the term thereof ended during the continuance of said policy, and he did not die because of any excepted or objectionable cause in said policy specified or referred to.

And said plaintiff avers that she, said plaintiff, has hitherto and that said John W. Hillmon in his lifetime respectively duly performed all and singular the conditions and requirements on their or either of their part and all the conditions in or by said policy of insurance made, shown, or referred to on their, said plaintiff and John W. Hillmon, or either of their part to be done or performed, including the giving of due notice and furnishing of satisfactory evidence by said plaintiff to said defendant of the death of said John W. Hillmon during the continuance of said policy and while the contract thereby shown was in full force and effect, and all this more than sixty days before the commencement of this action.

And said plaintiff further avers that heretofore, to wit, on or about the twentieth day of March, A. D. 1879, she duly notified said defendant of the death of said John W. Hillmon, and said defendant then had notice and knew thereof, and that he had died during the continuance of said policy; and afterwards and on the twenty-first day of May, A. D. 1879, said plaintiff gave and furnished said defendant proof of the death of said John W. Hillmon during the continuance of said policy and required and demanded of and from said defendant that it forthwith furnish and deliver to said plaintiff blanks and forms for other and further proof of the death of said John W. Hillmon unless said defendant elected to consider the proof so made formal proof of said death; and thereupon said de-

4 fendant elected to consider and accept and duly accepted the proof so furnished as formal and sufficient proof of said death, and said defendant then neglected and refused and still neglects and refuses to furnish or deliver to said plaintiff such or any blanks or forms.

And said plaintiff further avers that afterwards, to wit, on the nineteenth day of August, A. D. 1879, said plaintiff furnished further proof of said death to said company sufficient to be satisfactory to said company and which was and is satisfactory to said defendant; and said defendant, though duly requested and having notice of said death more than sixty days before the commencement of this action,

has hitherto neglected and refused and still neglects and refuses to furnish, deliver, or supply said plaintiff with or permit her to have defendant's blanks for proofs of death, and said defendant more than sixty days before the commencement of this action waived any other or further proof of said death and any other or further statement of any person or of any matter other or further than such as already made and furnished and delivered to said defendant.

Yet said defendant, though often requested, has not as yet ever paid to said plaintiff the said sum of money above mentioned nor any part thereof nor any interest thereon, but, on the contrary, to pay the same or any part thereof said defendant has hitherto and still does wholly neglect and refuse.

Wherefore said plaintiff prays and demands judgment against said defendant in the sum of ten thousand dollars and interest thereon, at the rate of seven per cent. per annum, from the nineteenth day of August, A. D. 1879, and for costs of suit.

L. B. WHEAT,
R. J. BORGHOLTHAUS,
SAM'L A. RIGGS &
JOHN HUTCHINGS,
Att'ys for Plaintiff.

5 *Precipe.*

The clerk of the above-named court will please issue summons to the defendant in the above petition named, directed to the sup't of insurance of the State of Kansas, returnable according to law.

Suit brought for the recovery of money. Amount claimed, ten thousand dollars, $10,000.00, with interest thereon from the nineteenth day of August, A. D. 1879, at 7 per cent. per annum.

L. B. WHEAT,
R. J. BORGHOLTHAUS,
SAM'L A. RIGGS,
JOHN HUTCHINGS,
Att'ys for Plaintiff.

6 EXHIBIT No. 1.

No. 195,132. Age, 31 years. Amount, $10,000.

Semi-annual premium.

In consideration of the application for this policy of insurance, which is hereby referred to and made a part of this contract, and of each of the statements made therein, which, whether written by his own hand or not, every — accepting or acquiring any interest in this contract hereby adopts as his own, admits to be material, and warrants to be full and true and to be the only statements upon which *to be the only statements upon which* this contract is made, and in further consideration of the premium of one hundred and twenty-one dollars and forty cents, to be paid in advance to the company at its home office, in the city of New York, and of the payment of a like sum, to be made at the said office on or before

the tenth day of December and June in every year during the continuance of this contract, — does promise to pay to Sallie E. Hillmon, wife of John W. Hillmon, of Lawrence, Douglas Co., Kans. (the person whose life is hereby insured), for her sole use, if living, in conformity with the statute, and, if not living, to their children or their guardian, for their use, the sum of ten thousand dollars (any indebtedness to the company on account of this contract to be first deducted therefrom), at the said office of the company, in the city of New York, within sixty days after notice and the proofs hereinafter required of the death of the said person whose life is insured shall have been furnished to the company at its said office, upon the following conditions:

1. If any statement made in the application for this policy be in any respect untrue the consideration of this contract shall be deemed to have failed and the company shall be without liability under it.

7 2. If any premium or installment of a premium on this policy shall not be paid when due, the consideration of this contract shall be deemed to have failed and the company shall be released from liability, and the only evidence of payment shall be the receipt of the company signed by the president or secretary.

3. If the said person upon whose death this policy matures shall die in consequence of a duel, or of the violation of law, or of resistance to any legally constituted authorities, or by disease, or by violence or accident brought about by intoxication, or shall impair his health by narcotics or alcoholic stimulants, or shall have delirium tremens, or if he shall be convicted of felony, or shall engage in any insurrection or rebellion against the government of any State or of the United States, or if, without the written consent of the company signed by the president or secretary thereof, he shall pass or remain beyond the limits of residence and travel, or shall personally engage or participate in any of the occupations or employments which are specified on the back of this policy, the company shall be released from all liability on account of this contract.

4. It is hereby declared and agreed that the self-destruction of the person during the continuance of this insurance, whether voluntary or involuntary and whether he be sane or insane at the time, is not a risk assumed by the company in this contract, but in every such case the company will, upon demand made and the surrender of this policy, accompanied with satisfactory proofs of such death, within sixty days after its occurrence, pay the net reserve upon it held by the company at the beginning of the year in which death occurs, calculated by the present legal standard of the State of New York, first deducting therefrom any indebtedness which shall have accrued to the company on account of this contract.

8 5. The contract between the parties hereto is completely set forth in this policy and the application therefor, taking together, and none of its terms can be modified, nor any forfeiture under it waived except by an agreement in writing signed by president or secretary of the company, whose authority for this purpose will not be delegated; and it is further declared and agreed that

in case the obligation of the company under this contract be defeated by the failure of any of the considerations or by the violation of any of the covenants or conditions recited or referred to herein all payments which shall have been made to the company on account of this contract shall be forfeited to the company.

6. The proofs of death by which this contract matures shall be furnished to the company within one year after such death, and shall contain full and true answers under oath to the questions in the company's blanks for proofs of death relating to the life, health, and death of the person in question, and shall include (1) a statement of the extent and character of each and every claimant's interest in the policy; (2) the statement of the physician or physicians, if more than one, who attended the deceased during his last illness or within a year previous; (3) the statement of a responsible householder acquainted with the deceased; (4) the statement of the undertaker. If any of these statements be omitted the necessity of the omission must be published and further proofs satisfactory to the company must be furnished.

7. In any suit or proceeding at law or in equity upon this policy it shall be governed by, subject to, and constructed only according to the charter of the company and laws of the State of New York in force at the date hereof, and elsewhere than in the said State such suit or proceeding shall be brought and prosecuted in the circuit or district courts of the United States and not otherwise, unless by written consent of the company; and no such suit or proceeding shall be brought or action commenced against the company under this contract after one year from the time when the right of action accrues, and if any such action, suit, or proceeding be brought after that time the lapse of time shall be conclusive evidence against the claim.

8. The provisions and requirements printed by the company upon the back of this policy are hereby referred to and accepted as part of this contract as fully as if they were recited at length over the signatures hereto affixed.

In witness whereof the said The Mutual Life Insurance Company of New York has caused this policy to be signed by its president and secretary at its office, in the city of New York, the tenth day of December, A. D. one thousand eight hundred and seventy-eight.

ROB'T A. GRANNISS,
Vice-President.

ISAAC F. LLOYD, *Secretary.*

A surrender value will be allowed for this policy after two years' full payments have been made, if applied for within sixty days after a premium becomes due, either in insurance or in cash, according to estimated value in use by the company, provided at the date of such surrender the same is legally made in conformity with its rules.

ISAAC F. LLOYD, *Secretary.*

Endorsed: No. 3147. Circuit court of United States, district of

Kansas. Sallie E. Hillmon *vs.* The Mutual Life Insurance Company of New York. Petition. L. B. Wheat, R. J. Borgholthaus, Sam'l A. Riggs & John Hutchings, att'ys for plaintiff. Filed July 13, 1880. A. S. Thomas clerk.

10 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

I enter myself security for costs in said case and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by her I hereby agree and stipulate that execution may issue against my property for any costs taxed against her.

Dated 15th day of May, 1880.

A. S. BALDWIN.

Endorsed: No. 3147. Sallie E. Hillmon *vs.* The Mutual Life Ins. Co. of N. Y. Security for costs. Filed July 13, 1880. A. S. Thomas, clerk. Approved July 13, 1880. A. S. Thomas, clerk.

11 STATE OF KANSAS, INSURANCE DEPARTMENT.

I, Orrin T. Welch, superintendent of insurance for the State of Kansas, do hereby certify that I received the annexed summons in case of Sallie E. Hillmon *versus* The Mutual Life Insurance Company of New York, issued by the clerk of the circuit court of the United States, district of Kansas, dated the 13th day of July, A. D. 1880, on the 13th day of July, A. D. 1880, at three o'clock p. m., and that on the 14th day of July, A. D. 1880, I forwarded a duly certified copy of the same by depositing it in the United States mail, postage paid, addressed as follows: Isaac F. Lloyd, sec'y of the Mutual Life Ins. Co., New York city, N. Y. Said Mutual Life Insurance Company has no general agent residing in this State.

In witness whereof I have hereunto set my hand and [SEAL.] affixed my official seal, at the city of Topeka, this 14th day of July, A. D. 1880.

ORRIN T. WELCH,
Superintendent.

Fees:

Making copy for sec'y of Co.	25c.
" certificate on same	25
Certifying the same	1 00
Making certificate of return	25
Certifying the same	1 00
Total	$2 75

12 Circuit Court of the United States of America, District of Kansas, *ss:*

The United States of America to Orrin T. Welch, superintendent of insurance of the State of Kansas, Greeting:

You are hereby commanded to notify the Mutual Life Insurance Company of New York that it has been sued by Sallie E. Hillmon in the circuit court of the United States for the district of Kansas, and that unless it answer by the twenty-second day of August, A. D. 1880, the petition of the said Sallie E. Hillmon against it filed in the clerk's office of the said court such petition will be taken as true and judgment rendered accordingly. You will make due return of this writ according to law.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Topeka, in said district, this 13th day of July, A. D. 1880.

[SEAL.] A. S. THOMAS, *Clerk.*

[Endorsed:] No. 3147. Circuit court of the United States, district of Kansas. Sallie E. Hillmon *vs.* The Mutual Life Insurance Company of New York. Summons. Issued July 13, 1880, returnable according to law. Filed July 14, 1880. A. S. Thomas, cl'k. L. B. Wheat, R. J. Borghalthaus, Samuel A. Riggs & John Hutchings, attorneys for plaintiff.

Suit brought for the recovery of money. Amount claimed, $10,000, with interest from the 19 day of August, A. D. 1879, at the rate of 7 per cent. per annum.

L. B. WHEAT,
R. J. BORGHALTHAUS,
SAM'L A. RIGGS &
JOHN HUTCHINGS,
Attorneys for Plaintiff.

U. S. Marshal's Return.

DISTRICT OF KANSAS, *ss:*

Received the within writ —— the —, 188–.

—— ——.

13 UNITED STATES OF AMERICA, }
District of Kansas. }

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff, }
vs. }
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant. }

And now, at this day, comes the Mutual Life Insurance Company of New York and moves the court here for an order requiring said

plaintiff, Sallie E. Hillmon, to give additional security for costs in said action for the following reasons, to wit:

1st. That the security, A. S. Baldwin, is insolvent.

2nd. That said A. S. Baldwin is insufficient financially as a security for costs in said action.

J. W. GREEN AND
GEO. J. BARKER,
Att'ys for Def't.

Endorsed: No. 3147. Sallie E. Hillmon *vs.* The Mutual Life Insurance Company of New York. Motion requiring additional security for costs. Filed Aug. 21, 1880. A. S. Thomas, clerk. J. W. Green and Geo. J. Barker, att'ys for def't.

14 UNITED STATES OF AMERICA, }
District of Kansas. }

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

And now, at this day, comes the defendant, The Mutual Life Insurance Company of New York, and moves the court here for an order requiring said plaintiff, Sallie E. Hillmon, to make her said petition filed herein more definite and certain, in this, to wit:

That said plaintiff be required to state specifically of what particular disease, injury, or cause the said John W. Hillmon died.

J. W. GREEN AND
GEO. J. BARKER,
Att'ys for Defendant.

Endorsed: No. 3147. Sallie E. Hillmon *vs.* The Mutual Life Insurance Company, New York. Motion to make petition more definite and certain. Filed Aug. 21, 1880. A. S. Thomas, clerk. J. W. Green and Geo. J. Barker, att'ys for def't.

15 UNITED STATES OF AMERICA, }
District of Kansas, } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 22nd day of November, A. D. 1880, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

FRIDAY, *December* 3, 1880.

Now come the parties hereto, by their attorneys, and thereupon the defendant's motions for additional security for costs and to make

petition more definite and certain came on to be heard and were argued by counsel; on consideration whereof it is ordered by the court that the sureties herein do justify within ten days from this date, and the motion to make petition more definite and certain is overruled; to which ruling defendant excepts. Leave is given defendant to file answer in thirty days, and action continued to the next term of this court.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SATURDAY, *December* 18, 1880.

The defendant's motion for additional security for costs came on to be heard and was argued by counsel; on consideration whereof it is ordered by the court that the same be, and is hereby, overruled.

16 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant. } Answer.

The defendant, The Mutual Life Insurance Company of New York, for its first defense, represents and shows to the court that it denies all and singular the allegations and averments contained and set forth in said plaintiff's petition filed herein; and for a further and second defense said defendant shows that on or about the — day of ——, A. D. 1879, a dispute, difference, and controversy subsisted between said plaintiff and defendant, in this, to wit: Said plaintiff claimed that one John W. Hillmon, the person mentioned in the policy of insurance set forth in said plaintiff's petition, died near Medicine Lodge, in Barbour county, State of Kansas, on or about the — day of ——, A. D. 1879, from a gunshot wound then and there accidentally discharged by one John S. Brown, and that by reason thereof a cause of action had accrued to her, this plaintiff, while the said defendant denied that the said John W. Hillmon was dead, and that any cause of action had accrued to said plaintiff.

That for the purpose of ending said dispute and controversy said *defendant*, for a good and valuable consideration to her by said defendant paid, made, executed, and delivered to said defendant her certain release and satisfaction in writing, of which the following is a true copy, to wit:

"LEAVENWORTH, KANSAS, *Sept.* 15, 1879.

In consideration of one dollar to me in hand paid, the receipt whereof is hereby acknowledged, I hereby release, surrender,
17 and acknowledge *I hereby release, surrender, and acknowledge* satisfaction in full of all claims against the Mutual Life Insurance Company of New York by reason of policy No. 195,132,

issued by said company, dated Dec. 10, 1878, and for the sum of ten thousand dollars on the life of my husband, John W. Hillmon, and hereby enter satisfaction in full and order the dismissal of any and all suits or proceedings commenced or that may hereafter be commenced by any person or persons in my behalf for the collection of the same.

(Signed) SALLIE E. HILLMON.

Attest:
W. J. BUCHAN.
JOHN H. BROWN."

Wherefore defendant asks judgment for costs of this suit.

J. W. GREEN AND
GEO. J. BARKER,
Att'ys for Def't.

Endorsed: No. 3147. Sallie E. Hillmon *vs.* The Mutual Life Insurance Company of New York, def't. Answer. Filed Jan. 3, 1881. A. S. Thomas, clerk. J. W. Green and Geo. J. Barker, att'ys for def't.

Circuit Court of the United States, District of Kansas.

SALLIE E. HILLMON, Pl'ff,
vs
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Def't. } Reply.

The plaintiff, for reply to the answer of the defendant herein filed, says:

I. That she denies each and every allegation in said answer contained.

II. The said so-called release and satisfaction in writing in the second defense in defendant's said answer set out was obtained
18 from the plaintiff without any consideration whatever and was and is inoperative and void.

III. That at the county of Barbour, in the State of Kansas, on or about the 17th day of March, A. D. 1879, John W. Hillmon, the husband of this plaintiff and the person whose life was insured in and by the policy set out in plaintiff's petition, died from a gunshot wound produced by the accidental discharge of a gun in the hands of one John H. Brown; that on or about the 15th day of September, A. D. 1879, the date of the so-called release and satisfaction set out in defendant's second defense, the said defendant, by its duly authorized agents and other persons by the procurement of said defendant, falsely and fraudulently represented to this plaintiff that her husband, the said John W. Hillmon, was then still living and the said John H. Brown would so testify on the trial of any action brought to recover the amount due under said policy, and that he would testify that the body which had been produced and identified by her as the body of her said husband was not the body of the said John W. Hillmon, but was the body of another and different

person, and, to induce the plaintiff to believe the said false and fraudulent representations, procured the said John H. Brown, upon whose testimony the plaintiff was relying to establish the fact of the death of her said husband and her right to recover the amount of said policy, to make a statement in writing to the effect that the said John W. Hillmon was still living as aforesaid, and that the body which had been produced and identified by her as the body of her said husband was not the body of said John W. Hillmon, but was the body of another and different person; that the said representations, at the time the same were made and at the time the so-called release and satisfaction was signed by this plaintiff, were false
19 and were known to be false by said defendant, its agents, and the persons making the same, and the same were made for the purpose and with the intention of deceiving and defrauding this plaintiff of her right to recover the amount due her on and under the said policy.

That the said plaintiff, by means of said false and fraudulent representations and the said statement of said John H. Brown, and being thereby led and influenced to believe that the said Brown would testify as the defendant and its agents had represented, contrary to the truth and facts in the premises, was induced by said defendant and its agents and other persons acting in its behalf to sign and deliver without consideration the so-called release and satisfaction set out in defendant's second defense.

L. B. WHEAT,
SAM'L A. RIGGS,
R. J. BORGHOLTHAUS &
JOHN HUTCHINGS,
Att'ys for Plaintiff.

The time to file the foregoing reply is hereby extended to March 21st, A. D. 1881.

GEO. J. BARKER,
J. W. GREEN,
Att'ys for Defendant.

Endorsed: No. 3147. Circuit court of the United States, district of Kansas. Sallie E. Hillmon *vs.* The Mutual Life Insurance Company of New York. Reply. L. B. Wheat, S. A. Riggs, R. J. Borghalthaus & John Hutchings, att'ys for pl'ff. Filed Mar. 21, 1881. A. S. Thomas, clerk.

20 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 6th day of June, A. D. 1881, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

TUESDAY, *June* 7, 1881.

Now comes the defendant, by J. W. Green and Geo. J. Barker, its attorneys, and on its motion it is ordered by the court that leave be, and is hereby, given it to file amended answer.

21 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant. } Answer.

1st. The defendant, The Mutual Life Insurance Company of New York, for its first defense represents and shows to the court that it denies all and singular the allegations and averments contained and set forth in said plaintiff's petition filed herein.

2nd. Said defendant, further answering, says that on and before the 30th day of November, A. D. 1878, one John W. Hillmon, John H. Brown, and Levi Baldwin and divers other persons, to the defendant unknown, unlawfully and fraudulently confederating, conspiring, contriving, and intending to cheat and defraud this defendant, procured a large amount of insurance to be taken on the life of the said John W. Hillmon, to wit, in the New York Life Insurance Company, by its policy numbered 134,418 and dated November 30th, 1878, for the sum of ten thousand dollars; in the Mutual Life Insurance Company of New York, by its policy numbered 195,132 and dated Dec. 10th, 1878, for the sum of ten thousand dollars, and in the Connecticut Mutual Life Insurance Company, by its policy numbered 153,614 and dated March 4th, 1881, for the sum of five thousand dollars.

That thereafter and in pursuance of said conspiracy and with said intent said Hillman, Brown, and Baldwin did falsely and fraudulently pretend and represent unto this defendant and others that said Hillman was dead, and did, in or about the months of March & April, A. D. 1879, and thereafter, for the purpose of securing the payment of said policies and obtaining the money thereon,
22 falsely and fraudulently claim, pretend, and represent unto this defendant that the said John W. Hillman was dead, and that a certain dead body which they had procured and had was the dead body of the said John W. Hillman, whereas said John W. Hillman was not and is not dead; that since said time the said Hillman has kept himself concealed and has and is keeping himself concealed under assumed names for the purpose of consummating the conspiracy entered into as aforesaid; that no premium or payment of any kind has ever been — on or on account of said policy, and that said policy is void.

3rd. Said defendant, further answering, says that on or about the — day of ——, A. D. 1879, a dispute, difference, and controversy subsisted between said plaintiff and defendant, in this, to wit: Said plaintiff claimed that one John W. Hillman, the person mentioned in the policy of insurance set forth in said plaintiff's petition, died near Medicine Lodge, in Barbour county, State of Kansas, on or about the — day of ——, A. D. 1879, from a gunshot wound then and there accidentally discharged by one John S. Brown, and that by reason thereof a cause of action had accrued to her, this plaintiff, while the said defendant denied that the said John W. Hillman was dead and that any cause of action had accrued to said plaintiff.

That for the purpose of ending said dispute and controversy said plaintiff, for a good and valuable consideration to her by said defendant paid, made, executed, and delivered to said defendant her certain release and satisfaction in writing, of which the following is a true copy, to wit:

"LEAVENWORTH, KANSAS, *Sept.* 15, 1879.

In consideration of one dollar to me in hand paid, the receipt whereof is hereby acknowledged, I hereby release, surrender, and acknowledge satisfaction in full of all claims against the
23 Mutual Life Insurance Company of New York by reason of policy No. 195,132, issued by said company, dated Dec. 10, 1878, and for the sum of ten thousand dollars on the life of my husband, John W. Hillman, and hereby enter satisfaction in full and order the dismissal of any and all suits or proceedings commenced or that may hereafter be commenced by any person in my behalf for the collection of the same.

(Signed) SALLIE E. HILLMAN.

Attest:
W. J. BUCHAN.
JOHN H. BROWN."

Wherefore defendant asks judgment that said policy be declared null and void and for costs.

J. W. GREEN &
GEO. J. BARKER,
Att'ys for Def't.

Endorsed: No. 3147. Sallie E. Hillman *vs.* The Mutual Life Insurance Company of New York. Amended answer. Filed June 7, 1881. A. S. Thomas, clerk. J. W. Green & Geo. J. Barker, att'ys for def't.

24 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON
vs.
THE NEW YORK MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } Stipulation.

It is hereby stipulated and agreed by and between the parties

hereto that the plaintiff shall have thirty days in which to file a reply to defendant's amended answer filed herein, and that this cause stand continued until the November term, A. D. 1881, of this court.

S. A. RIGGS,
JNO. HUTCHINGS,
R. J. BORGHALTHAUS,
Att'ys for Plaintiff.
GEO. J. BARKER &
J. W. GREENE,
Att'ys for Def't.

Endorsed: No. 3147. Sallie E. Hillmon *vs.* The N. Y. Mutual Life Ins. Company. Stipulation. Filed June 14, 1881. A. S. Thomas, clerk.

SALLIE E. HILLMAN
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

TUESDAY, *June* 14, 1881.

Continued as per stipulation.

25 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant. } Amended Reply.

The plaintiff, for her amended reply to the amended answer of the defendant herein filed, says—

1st. That she denies each and every allegation in said amended answer contained.

2nd. The said so-called release and satisfaction in writing in the third defense in defendant's said amended answer set forth was obtained from the plaintiff without any consideration whatever, and was and is inoperative and void.

3d. That at the county of Barbour, State of Kansas, on or about the 17th day of March, A. D. 1879, J. W. Hillmon, the husband of the plaintiff and the person whose life was insured in and by the policy set out in plaintiff's petition, died from a gunshot wound produced by the accidental discharge of a gun in the hands of one John H. Brown; that on or about the 15th day of September, A. D. 1879, the date of the so-called release and satisfaction set out in the defendant's 3rd defense in its amended answer, the said defendant, by its duly authorized agents and other persons by the procurement of said defendant, falsely and fraudulently represented to this plaintiff that her husband, the said John W. Hillmon, was then still living and had been seen alive since his alleged death, on or about the 17th day of March, A. D. 1879, and that they could produce him, the said Hillmon, alive as aforesaid; that the said John H. Brown would testify in the trial of any action brought to recover

the amount due under or upon said policy that the said Hill-
26 mon was not dead, but was still living, and that the body which had been produced and identified by her, the said plaintiff, as the body of her said husband was not the body of said John W. Hillmon, but was the body of another and different person, and, to indue the plaintiff to believe the said false and fraudulent representations, and that the said Brown would testify as aforesaid, and to prevent her from suing on the policy mentioned in the petition herein and to induce her to surrender the same, procured the said John H. Brown, upon whose testimony the plaintiff was relying to establish the fact of the death of her said husband and her right to recover the amount of said policy, to make a statement in writing to the effect that the said John W. Hillmon was still living as aforesaid, and that the body which had been produced and identified by her as the body of her said husband was not the body of said John W. Hillmon, but was the body of another and different person, who had been murdered by the said John W. Hillmon, and procured the said John H. Brown to state to this plaintiff that he would in any action brought on or under said policy testify as aforesaid, and that he would testify that the whole transaction relating to the procurement of said policy and the alleged death of her said husband was a fraud, and that she was a party to said fraud; that on or about the said 15th day of September, 1879, the said defendant, by its duly authorized agents and other persons by its procurement, fraudulently represented to this plaintiff that unless she executed and delivered the release of the policy which is set out in the 3rd defense of defendant's amended answer they would prosecute her for conspiring with divers other persons to defraud said defendant out of the amount of said policy, and that upon the said testimony of said Brown she would be convicted, but they would save her from such prosecution if she made and delivered the re-
27 lease aforesaid; that the plaintiff, being in ill health, was overcome by the said false and fraudulent statements and threats so made as aforesaid, and, relying upon the said false and fraudulent statements as to what the said Brown would swear to, and being thereby led and influenced to believe that the said Brown would testify as the defendant, its agents, and other persons by its procurement had represented, contrary to the truth and facts in the premises, and that she could not against such testimony of said Brown recover the amount due her on said policy, was induced by said defendant, its agents and other persons acting in its behalf, to sign and deliver without consideration the so-called release and satisfaction set out in the third defense of the defendant's amended answer.

That the said representations so made by the said defendant, its agents, and other persons by the procurement and in behalf of the said defendant at the time and times the same were made *and at the time and times the same were made* and at the time the said so-called release and satisfaction was signed by this plaintiff, were false and were known to be false by the said defendant, its said agents, and the said other persons making the same, and the same were made

for the purpose and with the intent of defrauding this plaintiff of her right to receive the amount due her on and under the said policy.

L. B. WHEAT,
JOHN HUTCHINGS,
R. J. BORGHOLTHAUS &
SAM'L A. RIGGS,
Att'ys for Pl'ff.

Endorsed: No. 3147. Sallie E. Hillmon *vs.* The Mutual Life Insurance Company of New York. Amended reply to defendant's amended answer. Filed Jan'y 2, 1882. A. S. Thomas, clerk, by Geo. N. Holmes, deputy.

28 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

And now comes the defendant and moves the court here for an order requiring the plaintiff and her attorneys of record, to wit, L. B. Wheat, John Hutchings, R. J. Borgolthaus, and Samuel A. Riggs, to give further and additional security for costs herein, for the reason—

First. That the security heretofore given is wholly inadequate and insufficient.

Second. Because the said attorneys are directly and pecuniarily interested in the result of said suit and are abundantly able to give security for costs herein.

That since the decision of the application heretofore made in this action for additional security for costs a large amount of costs have already accrued and much more costs and expenses will necessarily be incurred by the defendant in the preparation and trial of this action.

GEO. J. BARKER &
J. W. GREENE,
Att'ys for Def't.

Endorsed: No. 3147. Sallie E. Hillmon *vs.* The Mutual Life Insurance Company of New York. Motion for additional security for costs. Filed June 12, 1882. A. S. Thomas, clerk, by Geo. N. Holmes, deputy.

29 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 5th day of June, A. D. 1882, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

WEDNESDAY, *June* 14, 1882.

The defendant's motion to require the plaintiff to give additional security for costs came on to be heard and was argued by counsel; on consideration whereof it is ordered by the court that said motion be, and is hereby, overruled; to which ruling of the court the defendant then and there excepted.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 3149.

Now comes the plaintiff in the above-entitled actions, by L. B. Wheat, John Hutchings, S. A. Riggs, and R. J. Borgalthaus, her attorneys, and the defendants, by J. W. Green and Geo. J. Barker, their attorneys; and, it appearing to the court that the above-entitled actions are of like nature and relative to the same question, and to avoid unnecessary cost and delay, and that it is reasonable to do so, it is ordered by the court that said actions be, and the same are hereby, consolidated for trial; to which ruling and decision of the court the defendants then and there duly excepted. And to try the issues joined comes a jury, to wit, R. B. McClure, Thomas White, James M. Walthal, William Stockebrand, E. H. Hutchings, Leonard Bradbury, J. T. Fulton, Daniel Horville, Wm. Lyons, J. S. Todd, John P. Gleich, and Samuel Kieser, twelve good and lawful men of the body of the district of Kansas, who being duly empaneled and sworn to well and truly try the matters submitted to them in this action and a true verdict give according to the law and evidence, *and* thereupon the trial of this case is proceeded with; and, the trial not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *June* 15, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

31 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 16, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *June* 17, 1882.

Now come the parties herein, same as on yesterday; and, the jurors

empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until Monday.

32 SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *June* 19, 1882.

Now come the parties herein, same as on Saturday last; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 20, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

33 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 3149.

WEDNESDAY, *June* 21, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *June* 22, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

34 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *June* 26, 1882.

Now come the parties herein, same as on Friday last; and, the

jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 27, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

35 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *June* 28, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *June* 29, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

36 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 30, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *July* 1, 1882.

Now come the parties herein, same as on yesterday; and, the

jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and the jury, having heard the evidence, arguments of counsel, and instructions of the court, retire under the charge of a sworn bailiff for deliberation; and the
37 jury having been kept together until it satisfactorily appears that there is no probability of their agreeing, it is ordered by the court that they be, and are hereby, discharged.

UNITED STATES OF AMERICA, *District of Kansas*, } ss:

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 4th day of June, A. D. 1883, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 8, 1883.

The defendant's motion for additional security for costs in said actions came on to be heard and was argued by counsel; on consideration whereof it is ordered by the court that plaintiff, within ninety days from this time, give security for future costs of the officers of this court, to be approved by the clerk. Continued.

38 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE CO. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE CO. OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *Oct.* 9, 1883.

Now comes said plaintiff herein, by L. B. Wheat, her attorney, and on her motion the time in which she was heretofore required to give security for certain costs herein is extended to the first day of November next.

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Pl'ff,
vs.
MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant. } No. 3147.

SALLIE E. HILLMON, Pl'ff,
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant. } No. 3149.

SALLIE E. HILLMON, Plaintiff,
vs
NEW YORK LIFE INSURANCE COMPANY. } No. 3148

I hereby enter myself as security for and promise to pay all costs in the above-entitled actions which may accrue to any of the officers of this court subsequently to the 8th day of June, A. D. 1883, and in default of payment by the plaintiff of said costs I hereby agree and stipulate that execution may issue against my property
39 for any such costs taxed against said plaintiff.

Dated this eighth day of October, A. D. 1883.

WM. T. SINCLAIR.

Approved.
A. S. THOMAS, *Clerk.*

Endorsed: Nos. 3147, 3148, 3149. Sec. for costs. Filed Oct. 10, 1883. A. S. Thomas, clerk.

UNITED STATES OF AMERICA, *District of Kansas,* } *sct:*

In U. S. Circuit Court.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE CO. OF NEW YORK, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INS. COMPANY, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE CO.

STATE OF KANSAS, *County of Douglas,* } *sct:*

William T. Sinclair, being duly sworn, on his oath deposes and says that he is security for costs in the above consolidated cases under the order made at the June term, A. D. 1883, of said court, and that he is worth the sum of ten thousand dollars over and above

his debts, liabilities, and exemptions, and that said values are in real estate situate in the county of Douglas and State of Kansas; and further he saith not.

WM. T. SINCLAIR.

Subscribed & sworn to before me this 1st day of November, A. D. 1883.

[SEAL.] CHAS. CHADWICK,
Notary Public, Douglas County.

Com. expires Sept. 7, 1887.

40 Endorsed: Nos. 3147, 3148, 3149. Sallie E. Hillmon *vs.* The Mutual Life Ins. Co. of New York *et als.* *Instification* of surety. Filed Nov. 1, 1883. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

In the Circuit Court of the United States for the District of Kansas.
November Term, A. D. 1883.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant.

It is hereby stipulated and agreed that the above cases be, and the same are hereby, continued until the next term of the said court.

SALLIE E. HILLMON, *Pl'ff,*
By R. J. BORGALTHAUS, S. A. RIGGS,
L. B. WHEAT & JNO. HUTCHINGS,
Her Att'ys.
J. W. GREEN AND GEO. J. BARKER,
Att'ys for said Defendants.

Endorsed: No. 3147. Sallie E. Hillmon *vs.* The N. Y. Ins. Co. *et al.* Stipulation for continuance. Filed Nov. 26, 1883. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held in the city of Topeka, in said district, on Monday, the 26th day of November, A. D. 1883, proceedings were had and appear of record in words and figures fol-
41 lowing, to wit:

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

MONDAY, *Nov.* 26, 1883.

Continued.

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 24th day of November, A. D. 1884, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

FRIDAY, *Nov. 28th*, 1884.

Set for first Monday in March.

42 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. }

Now, at this day, comes the said defendant and moves the court for an order setting aside and vacating an order heretofore made in this cause, to wit, at the June term of this court, A. D. 1882, consolidating the said cause with that of Sallie E. Hillmon *vs.* The New York Life Insurance Company, being cause No. 3148 on the docket of this court, and Sallie E. Hillmon *vs.* The Connecticut Mutual Life Insurance Company, being cause No. 3149 on the docket of this court, for the reason that said causes cannot by law be consolidated.

The said defendant also demands a separate trial of its action herein.

GEO. J. BARKER,
Att'y for said Defendant.

Endorsed: No. 3147. Sallie E. Hillmon *vs.* The Mutual Life Insurance Company of New York. Motion. Filed June 4, 1885. A. S. Thomas, clerk.

43 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 1st day of June, A. D. 1885, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

FRIDAY, *June* 5, 1885.

The defendant's motion, herein filed June 4, 1885, to set aside and vacate an order made in this cause consolidating it with other causes therein named for trial and for a separate trial, came on to be heard and was argued by counsel; on consideration whereof the court doth overrule said motion; to which ruling and decision of the court the defendant duly excepted and excepts.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

It is ordered by Hon. Samuel F. Miller, presiding justice, that these actions be tried before Hon. D. J. Brewer, sitting apart for that trial; and thereupon these actions came on for trial in
44 their order together.

Now comes the plaintiff in the above-entitled actions by L. B. Wheat, John Hutchings, S. A. Riggs, and R. J. Borgholthaus, her attorneys, and the defendants by J. W. Green and Geo. J. Barker, their attorneys; and said entitled action having been heretofore consolidated for trial, and to try the issues joined come a jury, to wit, B. M. Tanner, J. P. G. Creamer, C. O. Knowles, H. D. Shepard, Nelson Giles, Jr., R. H. Stott, G. W. Greever, Wm. M. Nace, Joseph Kleinfield, Wm. M. Hamm, H. A. Cook, and P. B. Maxon, twelve good and lawful men of the body of the district of Kansas, who being duly empanelled and sworn to well and truly try the matters submitted to them in this action and a true verdict give according to the law and evidence, *and* thereupon the trial of this case is proceeded with; and, the trial not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *June* 6, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanelled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

45 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *June* 8, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE — OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 9, 1885.

Now come the parties herein, same as on yesterday; and, the jurors

empanneled herein being called and all being present, the trial of these causes *were* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

46 SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *June* 10, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *June* 11, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

47 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 12, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *June* 13, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

48 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *June* 15, 1885.

Now come the parties herein, same as on yesterday; and, the jurors

empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 16, 1885.

Now come the parties herein, same as on yesterday; and, the jury empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

49 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *June* 17, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *June* 18, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

50 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 19, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *June* 20, 1885.

Now come the parties herein, same as on yesterday; and, the

jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

51 SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *June* 22, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanelled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 23, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanelled herein being called and all being present, the trial of these causes *are* proceeded with, and the jury, having heard the evidence, arguments of counsel, and instructions of the court, retire under the charge of a sworn bailiff for deliberation.

52 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *June* 24, 1885.

Now come the parties herein, same as heretofore; and the jurors empanelled herein, come- into open court under charge of their sworn bailiff, are called and are all present, and, after having been kept together until it satisfactorily appears that there is no probability of their agreeing, it is ordered by the court that they be, and are hereby, discharged.

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 23rd day of November, A. D. 1885, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

FRIDAY, *Nov.* 27, 1885.

Continued by consent.

53 UNITED STATES OF AMERICA, } *ss:*
District of Kansas,

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 22nd day of November, A. D. 1886, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SATURDAY, *January* 22, 1887.

Continued by consent of counsel.

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 28th day of November, A. D. 1887, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

MONDAY, *January* 16, 1888.

Motion of W. T. Sinclair to be discharged from further security for costs in the foregoing cause is by leave of court withdrawn.

54 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.

The defendant, The Mutual Life Insurance Company of New York moves, asks, and requests the court to vacate and set aside the order heretofore made consolidating this case for trial with two other cases and asks and requests a separate trial hereof.

GEO. J. BARKER,
Att'y for said Defendant.

Endorsed: No. 3147. Sallie E. Hillmon *vs.* The Mutual Life Ins. Company of N. Y. Motion. Filed Feb. 29, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy. Geo. J. Barker, att'y for def't.

55 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *Feb.* 29, 1888.

This day the three causes above named coming up for trial in pursuance of the order heretofore made by this court requiring the same to be tried at one and the same time and as one cause, and the parties thereto appearing by counsel, thereupon each of the said named defendants filed its motion asking the court to set aside the order heretofore made requiring the causes to be tried as one and asking that each case be tried separately; and the said motions, being submitted to the court, were by the court overruled, it being ordered that, in pursuance to the order heretofore made, the causes should be tried as one cause; to which rulings and order each of the said defendants at the time duly excepted. And thereupon, by

direction of the court, a jury was empanelled for the trial of said causes, the several defendants claiming the right to challenge three persons peremptorily for each defendant; which claim was denied, the court ruling that but three peremptory challenges could be exercised by the defendants as a whole; to which ruling each of the said defendants at the time duly excepted. And, after three parties called into the jury-box had been peremptorily challenged by counsel for defendants, each of said defendants asked to be permitted to challenge one or more jurors peremptorily, which
56 request was refused by the court; to which ruling each of the said defendants at the time duly excepted. And after the defendants had challenged three parties peremptorily, there being in the box twelve good men, to wit, Samuel Kozier, G. W. Coffin, James Rood, Jacob Moon, J. S. Bouton, A. S. Davidson, H. S. Miller, Riley Elkins, J. S. Earnest, J. W. Farnsworth, Enoch Chase, and Furman Baker, against whom no challenges for cause existed or were made by either plaintiff or defendants, the same were duly sworn as the jury in said causes, and thereupon the opening statements for the respective parties were made to the jury, upon the conclusion of which the court adjourned until 9.30 a. m. of Thursday.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *March* 1, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

57 SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *March* 2, 1888.

Now come the parties herein, same as yesterday; and, all the jury

being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *March* 3, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until Monday next.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

58 SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *March* 5, 1888.

Now come the parties herein, same as on Saturday last; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *March* 6, 1888.

Now come the parties herein, same as yesterday; and, all the jury

being present, the trial hereof is proceeded with, and, the trial hereof not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
59 THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *March* 7, 1888.

Now come the parties herein, same as yesterday; and thereupon, with leave of court, plaintiff amends her petitions herein, to which defendants except; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *March* 8, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
60 THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *March* 9, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *March* 10, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until Monday.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *March* 12, 1888.

Now come the parties herein, same as on Saturday last;
61 and, all the jury being present, the trial hereof is proceeded

with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *March* 13, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *March* 14, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

62 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.

Now comes the defendant and moves the court for leave to amend its answer in the above-entitled action by interlineation and by inserting after the words "whereas said John Hillmon was not and is not dead" the words "and that the body which they then and there

had and had procured was the dead body of one Frederick A. Walters, formerly of Fort Madison, Iowa."

GEO. J. BARKER,
Att'y for Defendant.

Endorsed: No. 3147. Sallie E. Hillmon *vs.* The Mutual Life Ins. Co. of New York. Motion to amend answer. Filed March 14, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

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SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *March* 15, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *March* 16, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

64 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *March* 17, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until Monday next.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *March* 19, 1888.

Now come the parties herein, same as on Saturday last; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

65 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *March* 20, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not

being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

66 In United States Circuit Court for District of Kansas.

SALLIE E. HILLMAN
v.
MUTUAL LIFE INSURANCE COMPANY.

SAME
v.
CONNECTICUT LIFE INSURANCE COMPANY.

SAME
v.
NEW YORK LIFE INSURANCE COMPANY.

GENTLEMEN OF THE JURY: On the 13th day of July, 1880, Sallie E. Hillman brought in this court three actions at law—one against the Mutual Life Insurance Company of New York, one against the Connecticut Mutual Life Insurance Company, and one against the New York Life Insurance Company—each of these actions being based upon policies of insurance upon the life of John W. Hillman for the use and benefit of his wife, Sallie E. Hillman, the policy issued by the Mutual Life being for the sum of $10,000, that issued by the Connecticut Mutual being for the sum of $5,000, and the two policies issued by the New York Life being for $5,000 each, or $10,000 in the aggregate, thus making in all the sum of $25,000 insured in the three companies.

For the purpose of saving time and expense it was ordered by the court that these three actions thus brought should be tried at one and the same time, as the issues therein are identical. The three cases are therefore submitted to you for your decision, and
67 you will return a separate verdict in each case.

There is no question made in the evidence that the several policies of insurance declared on were duly issued by the respective companies, and it appears from the policies, which are in evidence, that they are all upon what is known as the life plan, and therefore to entitle plaintiff to recover thereon it must be made to appear that the said John W. Hillman is dead, and that his death took place whilst the policies were in force. On part of plaintiff it is claimed in the pleadings that John W. Hillman died in the latter part of March, 1879; that these several policies were then in full force; that due notice and proper proofs of the death of said John W. Hillman were furnished to each of the companies, as required by the terms of the policies, and that consequently she is entitled to recover the amounts due on said policies against the companies issuing the same.

Each of the defendants denies liability to the plaintiff; denies that John W. Hillman died as alleged; avers that he is still living; that said John W. Hillman, John H. Brown, Levi Baldwin, and others confederated together for the purpose of cheating and de-

frauding said insurance companies by procuring a large amount of insurance upon the life of said John W. Hillman and then pretending that he was dead and demanding payment of the policies, although in fact said Hillman was not dead, but was kept concealed in order to enable such fraud to be perpetrated, and that the dead body produced as the body of said Hillman was not so in fact, but was that of some other and different person; and, further, that on or about the 15th of September, 1879, the plaintiff executed a written release and discharge to each one of the companies acknowledging satisfaction of all claims against the company by reason
68 of the policy or policies issued upon the life of her husband, John W. Hillman.

In reply the plaintiff denies that her husband is still living, denies all the allegations of fraud and fraudulent conspiracy for the purpose of cheating the insurance companies, and avers that the written releases set up by defendants were procured from her by false representations and unfair means and without any consideration being paid her therefor, and that the same are therefore void and ineffectual to defeat her right of recovery in these suits.

These, briefly stated, are the allegations found in the pleadings of the parties, and it thus appears that the material allegation to be proven by the plaintiff in the first instance is that her husband, John W. Hillman, died in the month of March, 1879. Of the truth of this allegation the plaintiff must satisfy you by a fair and reasonable preponderance of the evidence before she can ask a verdict in her favor at your hands.

A very large amount of evidence touching this question has been introduced before you and which it becomes your duty to consider. I do not purpose to endeavor to recall to your attention the various items of evidence bearing upon the issues in the case. To undertake to do so, even in a cursory way, would require so lengthy a statement that it might perhaps defeat its purpose and, instead of aiding you in your deliberations, tend only to confuse your recollection. All I shall attempt to do in this particular is to set before you the general propositions which the parties have sought to maintain by the evidence introduced and the application that is to be made of some particular classes of evidence that have been brought into the cases. There are a few general propositions to which I shall briefly call your attention before passing to the special points presented
69 by the facts of these particular cases.

In the first place, the decision to be reached is practically dependent upon questions of fact of which you are the judges. It is for you to decide upon the credibility of witnesses, the weight to be given to their testimony, upon the effect to be given to the several matters established by the evidence, and, finally, it is for you to say from the entire evidence with whom the fair preponderance thereof lies, and whether or not the plaintiff has established the truth of the averment that her husband, John W. Hillman, died in March, 1879.

In considering the credibility of witnesses and the weight to be given to their testimony you have a right to consider their relation to or interest in the matter in dispute, their demeanor while testify-

ing, their intelligence, the means of information possessed by them, the accuracy of their memories, and any and all other facts appearing in the evidence which tends to throw light upon the subject of their testimony and either corroborates or weakens the credibility of the witnesses or the weight of their evidence.

Coming now to the cases in hand, the evidence adduced by plaintiff in support of the averment that her husband, John W. Hillman, was killed on or about the 18th day of March, 1879, in Barbour county, Kansas, may be included under three general heads, to wit: 1st, the direct testimony on the events that took place at the camp on Crooked creek; 2nd, the evidence tending to the identification of the dead body brought from the camp aforesaid to Medicine Lodge and thence to Lawrence; 3rd, the evidence tending to show that Hillman has been absent from his home from March, 1879, without tidings being received from him.

70 The fact that a dead body was in the camp on Crooked creek on the 18th day of March, 1879, is not disputed, and the only direct testimony as to the manner of the death comes from the witness, John H. Brown, who testifies that he and Hillman had been making a trip through Southern Kansas in search of a location for a ranch with a wagon team and camping outfit; that they went into camp on Crooked creek; that after supper on the 18th of March the witness Brown went to the wagon for the purpose of removing some blankets or other like material therefrom; that a gun had been put in the wagon by Hillman so that its muzzle projected over the side of the wagon, and that in the effort to remove the blankets or bed clothing the same became entangled with the gun and caused its discharge, and thereby his companion, John W. Hillman, was shot through the head and instantly killed.

Said Brown further testifies that he at once went to the nearest house and gave the alarm, and thereupon the people living in the neighborhood, being notified of the occurrence, came to the camp.

By the testimony of these parties it appears that when they reached the camp a dead body was found lying on the ground by the camp fire, having a bullet wound in the head; that the body was left undisturbed until the next morning, when an inquest was held, after which the body was removed to Medicine Lodge, where a second inquest was held, after which the body was interred in the burial ground at Medicine Lodge, from which place it was subsequently brought to Lawrence, Kansas, where the plaintiff resided.

No other witness save Brown was present in the camp on Crooked creek when the shot was fired that caused the death of the person whose body was there found, and the only direct testimony as to the circumstances under which the death of this person took

71 place comes from the lips of this witness.

If the testimony given by the witness Brown is credible and reliable, then but little doubt would exist as to the main and material fact upon which the rights of the parties depend, to wit, as to the death of said Hillman at the time and place claimed by plaintiff; but upon part of the defendants it is claimed that no dependence can be placed upon the testimony of the witness Brown by

reason of the fact that it is proven that Brown has under oath made a statement concerning this transaction which is wholly at variance with his testimony as a witness, and that by reason of these conflicting and contradictory statements his credibility as a witness is wholly destroyed.

For the purpose of impeaching a witness and affecting his credibility it is permitted to a party to show that the witness has at other times and places made contradictory statements of such a character that they are inconsistent with his evidence on material points, and it then becomes a question for the jury to determine whether any, and, if any, what, weight shall be given to the testimony of the witness whose credibility is thus impeached. Juries must in such cases distinguish between mere inconsistencies in statements of past transactions, made at different times, which arise from the lapse of time and the imperfection of human memory, and those positive and material contradictions which cannot be attributed to these causes, but must have been made intentionally. The contradictory statements relied upon as impeaching the credibility of the witness Brown belong to the latter class. By no possible exercise of charity can it be supposed that the witness became honestly confused in his recollection as to the events that took place in the camp on Crooked creek. He knows whether it was Hillman that there met his
72 death by being shot through the head through the accidental discharge of a gun in the manner described by the witness or whether it was another person who was intentionally shot by Hillman himself.

Brown himself admits making the written statement which is relied upon to impeach him, but claims that he was induced to make it by the representations made to him by one W. J. Buchan that unless he did so he, the witness, was liable to be arrested on a charge of being accessory to a murder. You have heard, gentlemen, the testimony adduced by both parties touching the circumstances under which this written statement was made, and it is for you to say what the truth is in this particular. Whether it be true that Brown voluntarily sent for Buchan, as is claimed by the latter, for the purpose of consulting with him in regard to the best method of avoiding all further trouble and preventing his arrest on a charge of murder by turning State's evidence or by making a statement which would aid in defeating a recovery on the policies of insurance on the life of Hillman, or whether Buchan and members of Brown's family urged Brown, as he claims, to make the statement in question in order to avoid arrest and to put a stop to any prosecution or effort to prosecute him at the instance of the insurance companies, the fact remains undisputed that he made the statement which has been read in your hearing and which is in its material matters in direct contradiction to his testimony as a witness in these cases. According to his own testimony he was willing, in order to save himself from a possible arrest and prosecution for an alleged offense, which he now testifies was not committed, to swear to a statement which, if true, would show that he was a deliberate and active participant in the murder of a third person and in the effort to palm off the body of such third

person as that of John W. Hillman for the purpose of cheating and defrauding the insurance companies, whilst, on the other hand, if the statement was untrue, the making it would probably result in cheating and defrauding Mrs. Hillman by preventing her recovery on the policies on the life of her husband. In other words, if the matters contained in the written statement signed and sworn to by Brown are substantially true, then he confesses that he willingly and deliberately entered into a conspiracy with John W. Hillman and Levi Baldwin to cheat and defraud the insurance companies, and in carrying on the conspiracy he became an accessory before and after the fact to a cold-blooded murder of an unoffending third person who had been induced to join *he* and Hillman on their trip. If these statements are not true, then it appears that Brown has deliberately sworn falsely to the matters set up in the written statement, knowing that the statement would be used to defeat plaintiff's recovery on the policies of insurance, but being willing so to do in order to escape arrest and prosecution for his connection or alleged connection with the death of the person who was killed in Barbour county.

Can any dependence be safely put on the testimony of a witness who has placed himself in the position of this man Brown? It is for you to say, gentlemen, whether any credence can be given to his testimony under such circumstances.

You must further bear in mind that this statement signed and sworn to by Brown is only admitted in evidence for the single purpose of impeaching the credibility of Brown as a witness. It is not to be considered by you on any other question nor as tending to establish the truth of the matters therein recited. The testimony you are to consider in determining the issues in the cases is that which has been given either by the witnesses on the stand in your presence or by depositions duly taken, where each party has had the opportunity of full examination and cross-examination for the purpose of drawing out all the facts within the knowledge of the witness and of testing the observation, memory, and credibility of the witness. *Ex parte* affidavits, signed by a person not in the presence of the parties and where no opportunity for a full direct and cross examination was afforded, are not permitted to be read as original evidence of the matters therein recited. They may be used to show that the witness has made contradictory statements, thus attacking the credibility of the witness, as I have already explained to you, but for no other purpose.

We pass now to a consideration of the second class of evidence adduced in the case, to wit, the evidence tending to the identification of the body found in the camp on Crooked creek and brought thence to Medicine Lodge and subsequently to Lawrence. You will remember, gentlemen, that the plaintiff introduced evidence showing that John W. Hillman was vaccinated on or about Feb'y 20, 1879, and that there appeared on the arm of the dead body vaccine sores; also that there was found on the dead body a suit of clothes, a diary or memorandum book, and other articles which had been the property of John W. Hillman; also a number of witnesses who

saw the body either at Medicine Lodge or subsequently at Lawrence testified that they had known John W. Hillman in life, and that the body in question was his, and the plaintiff herself, who saw the corpse at Lawrence, testified that it was the body of her husband. Photographs of Hillman taken at different times have also been submitted to your inspection, and witnesses have testified to their recollection of his personal appearance, of his height, weight, build, color of his hair, the form and cast of his face, and of the different features thereof, and testimony touching the personal appear-
75 ance of the corpse in like particulars has been introduced for the purpose of endeavoring to establish the identity of the corpse as being that of Hillman.

On behalf of defendants it is claimed that the finding of the vaccine sores on the arm of the corpse, instead of being evidence tending to identify the body as being that of John W. Hillman, is in fact evidence to the contrary, it being claimed that the condition they were in shows that the virus producing the same could not have — introduced into the arm at a date as early as it appears Hillman was vaccinated, to wit, Feb'y 20th, 1879. You have heard the evidence introduced by both parties on the question of the mode in which the vaccine virus operates, the stages it passes through, and the time required therefor and the various circumstances which may modify or affect the usual course of the vaccine disease, and it is for you to say what weight, if any, should be given on this question of identification to the fact that these sores were found upon the body in the condition in which the evidence shows they were in.

On behalf of defendants a number of witnesses testified that they had known John W. Hillman in his lifetime; that they had seen the body in question, and that it was not that of Hillman but of some other person. Defendants have also introduced testimony tending to show the personal features and characteristics of Hillman, including his height, build of his person, the size and shape of his hands, and other like particulars, and also evidence tending to show the appearance of the corpse in the like particulars, seeking thereby to show points of difference between Hillman and the body in question, and thereby to prove that the body was not that of the said Hillman.

To aid you in reaching a conclusion on this question the parties have also introduced photographs of Hillman and of the
76 corpse taken at Lawrence after its first interment at that place. The defendants also, not content with the introduction of evidence tending to show that the body in question was not that of John W. Hillman, claim that they have been able to ascertain whose body it was, averring that it was the body of one Frederick Adolph Walters, and in support of such claim have introduced evidence tending to show that said Walters formerly lived at Ft. Madison, Iowa; that he left there in March, 1878; that he was in Kansas in 1878 and 1879; that the last letter received from him by his family and friends was in the early part of March, 1879, from Wichita, and that since that time he has not been heard from by any one. The Walters family, becoming alarmed at not hearing

from him, caused enquiries to be made which resulted in the sending to Ft. Madison copies of the photographs taken of the dead body at Lawrence, and evidence has been introduced tending to show that the family and others who knew Frederick Adolph recognized the photographs as being those of the said Walters.

Several of the witnesses who knew him testify that he had a mole upon his back, not far from one of his shoulder-blades, and the physicians who examined the dead body at Lawrence testify that they found a mole upon the back of the corpse. They also testify that the existence of moles upon the human body is a common thing. The witnesses who knew Walters also testify as to his personal build, height, size, muscular development, length of his arm, hand, and foot; also as to the shape and appearance of his face and the features thereof, the color and texture of his hair and mustache, the condition and appearance of his teeth; and by comparing the descriptions thus given of him with those given of the dead body in question, including the photographs thereof, the defendants seek to show that it was the body of Walters, and consequently not
77 of Hillman.

To combat this claim on part of defendants, the plaintiff relies on the discrepancies claimed to exist in the descriptions given of Walters and the differences claimed to exist between these descriptions and the appearance of the body shown in the photographs, and also on the fact that the physicians who examined the dead body failed to find a scar upon either of the limbs thereof, whereas there is evidence tending to show that Walters had a scar of some magnitude upon one of his lower limbs, caused by the bite of a dog.

In considering the question of the identification of the dead body brought to Lawrence and claimed by plaintiff to be that of her husband, John W. Hillman, careful attention should be given by you to the point whether it appears that there were or not upon the body of said Hillman any permanent distinguishing marks which can be safely relied on as means of identification after death. On part of plaintiff it is claimed that there was a scar upon the cheek and nose of Hillman, resulting from an injury received when he was a young man, and which was described by the surgeon who dressed the same, and that the existence of this scar was perceivable on the face of the corpse, and also in the photograph thereof. If you are satisfied from the evidence that there was a scar upon Hillman's cheek and nose, and that a similar one was, in fact, apparent upon the face of the corpse, this would be evidence tending strongly to prove the identity of the body as being that of Hillman. On part of defendants it is claimed and they have introduced evidence tending to show that Hillman had a scar upon the back of his head; also that he had a defective or missing front tooth; also that he had
78 a scar about the thumb of one of his hands, caused by the explosion of a cartridge which he was forcing into his gun. On part of plaintiff it is denied that any of these alleged marks existed. You have heard the evidence adduced upon these matters by both parties, and it is for you to say what the evidence shows the facts to have been in these particulars.

Are you satisfied by a fair preponderance of the evidence that all or any of these marks did in fact exist in or on the person of John W. Hillmon? If so, then if the body in question was in truth the body of John W. Hillman we should expect to find these marks upon the body, provided proper search was made therefor.

You have heard the evidence tending to show the examination that was made of the body at different times for the purpose of ascertaining what scars or defects appeared thereon, and if the evidence fairly satisfies you that the body was examined with sufficient care and scrutiny to have detected the existence of a scar upon the head or hand of the corpse and none such were found, then the reasonable conclusion would be that they did not exist, and the failure to find, after proper search, upon the dead body marks corresponding to those, if any, which the evidence satisfies you were on the body of John W. Hillman would be evidence strongly tending to show that the body was not that of Hillman.

What under the evidence do you find the fact to be in regard to the condition of Hillman's teeth? Had he or not a defective or missing front tooth? Are you or not fairly satisfied by a preponderance of the evidence that he had a discolored or missing tooth? If the evidence, for instance, satisfies you that he had lost a front tooth, this could afford a means of identification.

79 If the evidence does not so show, then of course such means of identification would be wanting; but if by a fair preponderance of the evidence you are satisfied that Hillman had in fact lost a front tooth, then such loss of a tooth would be discoverable in his body after death, upon proper examination being made. There is no question made in the evidence that the teeth of the dead body were all present in their proper place; none were missing. If you are not satisfied, as I have already said, from the evidence that Hillman had lost a front tooth, then the fact that all the teeth were present in the mouth of the corpse would not justify you in finding that the body was not that of Hillman; but, on the other hand, if the evidence fairly satisfies you that in fact Hillman had lost a tooth, then the fact that all the teeth were found in the mouth of the corpse and none were missing would be evidence of the most important character and would justify you in finding that the body was not that of Hillman.

The third proposition on which plaintiff relies is the claim that John W. Hillman has not been heard from since March 18, 1879, and that the lapse of time is of itself evidence tending to show that he is dead. The unexplained absence of a party from his home and friends without his being heard from, if continued for a sufficient length of time, may become evidence tending to show that he is dead. For many purposes, such as settling estates and the like, the law adopts the presumption that an unexplained absence of seven years without tidings being received from the absent one is evidence of his death. In cases involving the issues presented in the causes now on trial, the weight to be given to continued absence without being heard from depends largely upon circumstances. Of

80 course, if it appears that a motive exists for the absent person

to remain absent and to keep his whereabouts concealed, the fact of his continued absence would have but little weight, because in such case the absence might be due, not to his death, but to the cause or causes which induced him to disappear in the first instance.

On part of the defendants it is claimed that the absence of John W. Hillman is due, not to his death, but to the fact that his absence and concealment are an essential element in the conspiracy which defendants claim was entered into by Hillman and others to defraud the insurance companies.

It is also claimed by defendants that there is evidence tending to show that Hillman has been seen since the date of his alleged death by parties who claim to be able to identify him by means of his photographs exhibited to them.

It is for you to say, from all the evidence bearing on this point, whether you are or not fairly satisfied that Hillman has not been seen or heard from since the 18th day of March, 1879, and, if he has not, whether such fact under all the circumstances aids you in determining whether the said Hillman met his death on the 18th day of March, 1879, by reason of a gunshot wound in the head.

On behalf of defendants it is claimed that there was a conspiracy entered into by and between John W. Hillman, John H. Brown, Levi Baldwin, and others for the purpose of defrauding the insurance companies by procuring a large amount of insurance on the life of Hillman and then falsely representing that he was dead, when he was not so in fact. Of course, if you are satisfied from the evidence that such a conspiracy was entered into, and that these suits are part of such plan and conspiracy, and that they are brought to recover the amount of the policies, when in fact Hillman
81 is still living, then it would be your duty to find that the allegation of conspiracy was established, and in such case your verdict should be for the defendants. Where it is shown that two or more persons have conspired together for some unlawful purpose, then the declarations and acts of the individuals so confederated together, made whilst engaged in furthering the unlawful purpose of the conspiracy, are receivable in evidence against each of the parties. During the introduction of the evidence there *was* admitted certain declarations and statements alleged to have been made by Levi Baldwin, John W. Hillman, and John H. Brown which, it is claimed, tend to show the manner in which the alleged conspiracy was to be carried out and the object and purpose thereof.

These declarations and statements are not to be considered by you in determining the question of the existence of the alleged conspiracy. That must be established by other sufficient evidence, and therefore, unless you are fairly satisfied by the other evidence in the case that the alleged conspiracy in fact existed, you must wholly disregard the evidence touching the declarations made by the parties named.

It also becomes my duty to instruct you in regard to the written releases that it appears were signed by the plaintiff before these suits were brought. These may be viewed in two aspects—1st, as admissions; 2nd, as releases in the technical sense of the term.

Upon part of the defendants it is claimed that the plaintiff by her conduct, as well as by the execution of these written releases, has in effect admitted that she had no just claim against the defendants upon the policies issued by them. The admissions made by a party to a suit may be put in evidence against him, and
82 they should be fairly weighed by the jury in determining the question to which they relate. The weight to be given to them varies with their character and the circumstances under which they may have been made.

The evidence thereof may be found not only in the declarations or statements, either written or oral, of the party, but also in the conduct of the party and the acts by him done in connection with the subject-matter in dispute.

It appears from the evidence that after John H. Brown had signed the written statement at his brother's house he subsequently met Mrs. Hillman at Levi Baldwin's and induced her to go to Leavenworth for the purpose of meeting W. J. Buchan. At that interview she was fully informed as to the contents of the statement made by Brown.

She herself testifies that she asked Brown how he dared make such a statement; that she had seen the body and knew it to be that of her husband; that Brown replied that it made no difference; he had made the statement and would stick to it. You will recall the testimony adduced by both parties as to what took place at this interview.

It further appears from the testimony of the plaintiff herself that after being informed of the nature of the statement made by Brown she signed the several releases read in evidence, which in form discharge the companies from liability on the several policies issued on her husband's life, and also endeavored to procure the policies from her attorney, and signed written orders on him directing him to deliver up the same.

From Leavenworth the plaintiff testifies she went to the residence of Levi Baldwin. Under date of Sept. 20, 1879, she
83 wrote from Ottawa, to W. J. Buchan, the letter read in evidence. She went to Wyandotte, where Mr. Buchan met her and took her to his own house, where she testifies she remained for a time, and then went, if I remember correctly, to Trenton, Missouri.

She again returned to Mr. Buchan's house, remaining there for some days.

Under date of January 3rd, 1880, she wrote to Mr. Buchan the letter, read in evidence, in which she speaks of going to Colorado.

Taking into account the action of the plaintiff in these particulars in connection with the execution of the releases, the defendants claim that the only fair construction thereof is that the conduct of the plaintiff was what it was because she knew she had no just claim against the companies, and amounts, therefore, to an admission on her part that no liability existed on the policies by reason of the fact that her husband was still living.

On behalf of plaintiff it is claimed that she was misled and en-

trapped into signing these releases and endeavoring to secure the delivery of the policies by the representations made to her by Brown and Buchan to the effect that the making of the statement by Brown would deprive her of the benefit of his testimony, and that the companies, being wealthy, would be able to defeat her claim, and thus leave a dark cloud upon her future.

You will consider, gentlemen, all the evidence adduced by either party tending to show the circumstances under which plaintiff executed these releases; also the conduct and acts of the plaintiff at and subsequent to the signing of the same, and all the facts which tend to throw light on her motives in executing the releases and in doing as she did in the premises.

The fact that she signed the releases is not disputed, and it is therefore incumbent on her to give some reasonable explanation of the giving of the same. Was her conduct in meeting Mr.
84 Buchan, in executing the releases, in endeavoring to secure the surrender of the policies from her own attorney without informing him of any reason therefor, in visiting Mr. Buchan's house, and in writing to him the letters read in evidence due to the fact that the representations and acts of Brown and Buchan had overcome her judgment and controlled her actions, even though she knew that her husband was in fact dead, or was it due to the fact, as claimed by the defendants, that she then knew that her husband was not dead; that she had no just claim against the insurance companies, and that unless she abandoned all claim upon the policies of her husband Brown and Baldwin would be liable to prosecution for a conspiracy to defraud the companies, and possibly to a prosecution for murder? Taking into account the situation of the plaintiff and all the facts deducible from the evidence tending to characterize or explain the execution of the releases and the acts of plaintiff in connection therewith, it is for you to say what weight they have in the nature of admissions on part of plaintiff tending to show that she knew she had no just claim against the defendants on the policies of insurance issued by them.

So far as these releases are to be considered in the nature of releases actually discharging the defendants from all liability on the policies, regardless of the question whether there is or is not an actual claim justly existing in favor of plaintiff by reason of the death of her husband, you are instructed that if from all the evidence in the cases you are fairly satisfied that when these releases were signed by plaintiff her husband was in fact dead, and that she was entitled to demand payment of the amounts of the several policies, and that plaintiff was induced to sign the releases by the representations made to her by Brown and Buchan, then the
85 same, being wholly without consideration, would be ineffectual to defeat her right of recovery on the policies.

I have thus in a general way endeavored to lay before you the more prominent features of these cases, and yet, owing to the large amount of evidence introduced, it may well be that I have omitted some which should not be overlooked, but which I trust your mem-

ories will recall, as well as the details of the evidence on all the material points in the cases.

You have perceived from the very beginning of the trial that the conclusion to be reached must practically turn upon one question of fact, and all the large volume of evidence, with its graphic and varied details, has no actual significance, save as the facts established thereby may throw light upon and aid you in answering the question, Whose body was it that on the evening of March 18, 1879, lay dead by the camp-fire on Crooked creek? The decision of that question decides the verdict you should render.

If the plaintiff, upon whom the burden of proof lies, has satisfied you by a fair and reasonable preponderance of the credible and reliable evidence that the body in question was in fact that of her husband, John W. Hillman, then she has proved his death, and that, being proved, entitles her to a verdict against the defendants in each of the three cases now submitted to you; but, on the other hand, if the plaintiff has failed to satisfy you by a fair and reasonable preponderance of the credible and reliable evidence that the body in question was in fact that of her husband, then she has failed to prove his death, and in that event your verdict must in each case be for the defendant.

Endorsed: Nos. 3147, 3148, and 3149. Charge. Filed Mar. 21, 1888. A. S. Thomas, clerk.

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SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *March* 21, 1888.

Now come the parties, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and the jury having heard the evidence and arguments of counsel, and being instructed by the court, retire for deliberation under charge of an officer duly sworn, and the jury, having agreed upon their verdicts, are duly conducted into court and render their verdicts herein in the words and figures following, to wit:

In the Circuit Court of the United States for the District of Kansas.

In the case of—

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

We, the jury in this action, find for the plaintiff and assess her

damages against the defendant at the sum of fifteen thousand and sixty dollars ($15,060).

G. W. COFFIN, *Foreman.*

87 And thereupon, on request of the defendants, the jury are duly polled, and each of them duly answers as to each of said verdicts respectively that it is his verdict, and thereupon the jury are discharged.

88 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.

Now comes the said defendant and moves the court to vacate and set aside the verdict and judgment heretofore rendered in the above-entitled action and to grant the said defendant a new trial therein for the following reasons, to wit:

1. Misconduct of the plaintiff in the trial of said action.
2. Misconduct on the part of the jury.
3. Because said verdict and judgment *is* contrary to the evidence.
4. Because said verdict and judgment *is* contrary to law.
5. Because of error of law occurring at the trial of said action and duly excepted to by the defendant at the time.
6. Newly discovered evidence material to the defendant which *they* could not by reasonable diligence have discovered upon the trial of this action.
7. Misconduct of plaintiff's attorneys on the argument of said case to the jury.

GEO. J. BARKER,
Attorney for Defendant.

Endorsed: No. 3147. Sallie E. Hillmon *vs.* The Mutual Life Insurance Company of New York. Motion for new trial. Filed March 21, 1888. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

89 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *March* 22, 1888.

Now come the parties herein, same as yesterday. These causes

coming up before the court, counsel for plaintiff moved for judgment against the several defendants upon the verdicts rendered, and defendants asked that action thereon be postponed until the motions for new trial had been heard and disposed of, and further asked that time be granted for the preparation and settlement of a bill of exceptions; and thereupon the court ordered that the time for settling and signing the bill of exceptions be extended to June 28th, 1888; that defendants have until May 15th, 1888, to prepare and serve upon plaintiff a copy of their bill of exceptions; that plaintiff have until June 20th to suggest amendments and serve copy thereof on defendants, and that the bill and amendments be submitted on June 28th, at Dubuque, Iowa, for settlement & signing, the same, when so signed and filed, to have the same force and effect as though filed this day. It was further ordered by the court that defendants have leave to file an amended motion for new trial by Monday, March 26, and to file and serve upon plaintiff affidavits in support thereof by April 15th, 1888, the plaintiff having leave to file & serve counter-affidavits by May 15th, the motion for new trial to be fully submitted on June 28th, at Dubuque, Iowa, and all further action on motion for judgments on the verdicts to be suspended until that date, when same will be heard in connection with motion for new trial.

90 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff, *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.	Consolidated Case.
SALLIE E. HILLMON, Plaintiff, *vs.* THE NEW YORK LIFE INSURANCE COMPANY, Defendant.	
SALLIE E. HILLMON, Plaintiff, *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant.	

Be it remembered that this trial came on to be heard on the 29th day of February, A. D. 1888, in the circuit court of the United States sitting in and for the district of Kansas, at the November term thereof, A. D. 1887, and thereupon each of the defendants in the several cases heretofore consolidated by the order of this court, to wit, on the — day of ——, A. D. 18—, at the —— term of the said court, filed their several motions in said cause; which said motions are in the words and figures following—that is to say:

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK MUTUAL LIFE INSURANCE COMPANY, Defendant.

The defendant, The New York Mutual Life Insurance
91 Company, moves, asks, and requests the court to vacate and set aside the order heretofore made consolidating this case for trial with two other cases, and asks and requests a separate trial thereof.

J. W. GREEN,
Attorney for said Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.

The defendant, The Mutual Life Insurance Company of New York, moves, asks, and requests the court to vacate and set aside the order heretofore made consolidating this case for trial with two other cases, and asks and requests a separate trial hereof.

GEORGE J. BARKER,
Attorney for said Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant.

The defendant, the Connecticut Mutual Life Insurance Company, moves, asks, and requests the court to vacate and set aside the order heretofore made consolidating this case for trial with two other cases, and asks and requests a separate trial thereof.

CHARLES S. GLEED,
Attorney for said Defendant.

And it appears that at the —— term of this court the following order consolidating said causes for trial had been entered, to wit:

UNITED STATES OF AMERICA, *District of Kansas*, } *ss:*

At a term of the circuit court of the United States of
92 America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 5th day of June, 1882, proceedings were had and appear on record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 3149.

WEDNESDAY, *June* 14*th*, 1882.

Now comes the plaintiff in the above-entitled actions, by L. B. Wheat, John Hutchings, S. A. Riggs, and R. J. Borgalthaus, her attorneys, and the defendants, by J. W. Green and George J. Barker, their attorneys; and, it appearing to the court that the above-entitled actions are of like nature and relative to the same question, and to avoid unnecessary cost and delay, and that it is reasonable to do so, it is ordered by the court that said actions be, and the same are hereby, consolidated for trial; to which ruling and decision of the court the defendants then and there duly excepted. And
93 to try the issues joined comes a jury, to wit, R. B. McClure, James M. Wathal, E. H. Hutchings, J. T. Fulton, W. M. Lyons, John P. Gleich, Thomas White, William Stockebraud, Leonard Bradbury, Daniel Horville, J. S. Todd, Samuel Kieser, twelve good and lawful men of a body of the district of Kansas, who being duly empanelled and sworn to well and truly try the matter submitted to them in this action and a true verdict give according to the law and evidence, *and* thereupon the trial of this case is proceeded with, and, the trial not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the future hearing postponed until to-morrow.

Thereupon the court overruled the present motion to set aside said order of consolidation, it being ordered that, in pursuance to the order heretofore made, the causes should be tried as one case; to which ruling and order the defendants and each of them duly excepted.

Be it further remembered that in the empaneling of the jury the defendants each claimed the right to challenge peremptorily three jurors on behalf of each defendant. Thereupon the court ruled that, the cases having been consolidated, the defendants were entitled to three peremptory challenges only; to which ruling of the court each of the defendants then and there duly excepted.

Be it further remembered that when the defendants were called upon to exercise their peremptory challenges the Mutual Life Insurance Company challenged one juror peremptorily, the New York Life Insurance Company challenged one juror peremptorily,
94 and the Connecticut Mutual Life Insurance Company challenged one juror peremptorily; and thereupon the court held that those challenges exhausted the right of peremptory challenge

on the part of the defendants, and each of the said defendants claimed and desired to exercise the right of challenging peremptorily one or more of said jury in addition to the three already challenged; which claim was refused by the court, and to which ruling each of the defendants at the time duly excepted.

Be it further remembered that thereupon the plaintiff, to sustain the issues in her behalf, introduced in evidence the several policies of insurance upon the life of John W. Hillmon issued by the defendant companies and declared upon by plaintiff in the several actions on trial; also evidence tending to show that formal proofs of death had been furnished these companies, as required by the terms of said policies; also evidence tending to show that the said John W. Hillmon in March, 1879, was travelling through Southern Kansas, in company with one John H. Brown, in search of a location for a cattle ranch; that on the 18th day of March, 1879, the said parties were in camp on Crooked creek, in Barbour county, Kansas; that on the evening of said day said Brown notified parties living in the neighborhood of the camp that he had accidentally shot his companion, John W. Hillmon, causing his instant death; that the parties so notified went to the camp and found a dead body by the campfire, said by Brown to be the body of Hillmon; that said body was removed the next day to Medicine Lodge, the county-seat of Barbour county, and, after an inquest thereon, was buried in the grave-yard at that place; that, upon information of said occurrence being sent to Lawrence, Kansas, where plaintiff resided, as well as the agents of the defendant companies, the plaintiff sent Levi Baldwin and Alva Baldwin to Medicine Lodge, and the defendants sent
95 Theo. Wiseman and Samuel Walker; that upon the arrival of these parties at Medicine Lodge the body was disinterred and taken to Lawrence Kansas; that an inquest was there held on the body, after which the same was buried by the plaintiff in the cemetery at Lawrence, Kansas; that plaintiff and others who knew John W. Hillmon testified that said body so brought to Lawrence was the body of said John W. Hillmon; also evidence tending to identify the said body as being that of John W. Hillmon; also evidence tending to show the pecuniary condition and ability of said Hillmon at the time he took out the insurance upon his life; also evidence tending to show when, how, and under what circumstances the releases signed by plaintiff were given, and that same were without consideration.

Be it further remembered that, touching the affidavit made by John H. Brown and introduced as evidence for the purpose of contradicting him, a large amount of evidence was introduced by both parties tending to show the circumstances leading up to the making of said affidavit, the defendants claiming that the affidavit had been voluntarily signed & sworn to by Brown, and the plaintiff claiming that Brown had been induced to make it by the representations of Buchan made directly to him & also through his brother, the said Buchan himself testifying that he had demanded & received compensation from the defendants for the procuring said affidavit, and also the execution of the written releases signed by plaintiff; and

thereupon the plaintiff, to further sustain the issues upon her part, read in evidence from the deposition of John H. Brown as follows:

Q. 23. What were you next employed by Hillmon to do?

A. To take a trip down to Southern Kansas to open up a cattle ranch.

Q. 24. Did you take that trip, and with whom?

A. I taken that trip with John W. Hillmon.

96 Q. 25. When and from where did you start?

A. We started from Lawrence, Kansas, in the year 1878, about a week or ten days before Christmas of that year.

Q. 26. How did you go?

A. Went by railroad to Wichita, Kansas. From Wichita we went in a spring wagon with a pair of horses.

Q. 27. Where did you go to from Wichita?

A. Medicine Lodge, in Barbour county, Kansas.

Q. 28. From Medicine Lodge, Barbour county, Kansas, where did you go to?

A. To Sun City—northwest, I would call it.

Q. 29. From Sun City where did you go?

A. Went from there to a town on the Arkansas river and on the Atchison, Topeka & Santa Fé railroad. I can't call the name.

Q. 30. From that town on the Atchison, Topeka & Santa Fé railroad where did you go?

A. To the Great Bend or Big Bend—a town named by that name; from there on to Hutchinson and several towns—I don't remember the names—to Wichita.

Q. 31. About what time did you arrive at Wichita?

A. About the 18th or 20th of January.

Q. 32. Who went with you on that trip?

A. John W. Hillmon.

Q. 33. What was the purpose of that trip?

Objected to by defendants because it is incompetent, irrelevant, and immaterial. Overruled, and exception saved.

A. The hunting up and locating a cattle ranch.

Also from the cross-examination of said John H. Brown, as follows:

97 Q. 338. On the 5th day of April, A. D. 1879, in the office of George J. Barker, in Lawrence, Kansas, were you not shown a postal card from Griffen, Texas, directed to Mr. Brocklesby, city marshal of Lawrence, inquiring if a man by the name of Hillmon lived in Lawrence, and stating in substance that he had a difficulty with a train of cattle; also stating that Hillmon formerly lived near Grasshopper, and if you were not asked if Hillmon was ever at Griffen, Texas, and if in reply thereto you did not state that Hillmon had been at Griffen, Texas, and that you was with him there?

Objected to by plaintiff's counsel, first, because the question calls for immaterial, irrelevant, and incompetent testimony; second, because the subjects of inquiry are not proper subjects of cross-ex-

amination; third, because the question is leading; fourth, because the question calls for the oral statement of the contents of a written instrument, which is not the best evidence of such contents; fifth, the question contains inquiries as to several separate and distinct subjects; sixth, if the question is asked for the purpose of obtaining an answer from the witness to be contradicted it is incompetent, because the subjects of inquiry are immaterial to the issues in this case. Sustained, and exception saved by defendants.

Q. 1244. State if the following is the statement made and prepared on the 4th day of September, 1879, at your brother's residence, situated near Parkville, Missouri, and which you afterward saw at the office of Francis M. McDonald, at Parkville, Missouri, and which you afterwards tore up and put in the stove at the office of W. J. Buchan, in Wyandotte, Kansas:

"STATE OF MISSOURI, } ss:
County of Platte, }

John H. Brown, of lawful age, being first duly sworn ac-
98 cording to law, deposes and says:

My name is John H. Brown; my age, thirty years. I am acquainted with John W. Hillmon, also Mrs. S E. Hillmon and Levi Baldwin, of Douglas county, Kansas; have known John W. Hillmon for about five years; have been with him a good deal for the past two years; was with him last March, at Wichita and on the trip from there to and around Medicine Lodge, in Barbour county, Kansas, where it is claimed that I killed him on the 17th of March, 1879. Along about the 10th of December, 1878, John W. Hillmon and Levi Baldwin talked about and entered into a conspiracy to defraud the New York Life Insurance Company and the Mutual Life — of New York out of some money, to be obtained by means of effecting a policy or policies on the life of said John W. Hillmon. Baldwin was to furnish the money to pay the premiums and to keep up the policies in case they had to be renewed. Our original arrangement was to get Hillmon's life insured for fifteen thousand dollars, but it was afterwards changed to twenty-five thousand dollars. Hillmon and myself were to go off southwest from Wichita, Kansas, ostensibly to locate a stock ranch, but in fact to in some way *to* find a subject to pass off as the body of John W. Hillmon, for the purpose of obtaining the insurance money aforesaid. We had no definite plan of getting a subject, but to in some manner get one. The final termination of the matter was the last idea thought of. Our first trip out from Wichita—the last days of December—while the snow was on the ground, we expected to find a subject that would appear to be Hillmon frozen to death, and that could not be identified only by the clothes and papers found on it, and so I could pass — off as Hillmon. We went from Wichita to Medicine Lodge; then direct to Sun City; from there to Kinsley; from there to Great Bend, on the Santa Fé road; then to Larned, and on to Wichita via Hutchinson. Hillmon
99 and myself were entirely alone on that trip. Iliff, of Medicine Lodge, saw Hillmon on this trip. We put up at

his stable. I then staid at Wichita until the 4th of March. Hillmon in the meantime went up to Lawrence to see his wife and to get some more money. He returned about the 1st of March, and on the 5th we left on our second trip. We went due west to Cowskin creek, then west to Harper City, then to Medicine Lodge, on by Sun City and beyond some miles; then we turned northeast down Medicine river to a camp on Elm creek about eighteen miles north of Medicine Lodge, where Hillmon is claimed to have been killed. We got there about an hour before sundown and staid in camp until the next evening. We overtook a stranger on this trip the first day out from Wichita, about two or two and one-half miles from town, who Hillmon invited to get in and ride, and who he (Hillmon) proposed to hire and work for him on the ranch as proposed to be located. This man was with us during all this trip. Hillmon proposed to me that this man would do for a subject to pass off for him. I told him and contended with him that the man would not do to pass off for him, giving him various reasons why the man would not answer his description, and complained and objected because his proposition was to take the man's life, and I protested and said that was going beyond what we had agreed and something that I had never before thought of, and was beyond my grit entirely; but Hillmon seemed to get more deeply determined and more and more desperate in the matter. Pains were taken not to have more than two of us seen together in the wagon; sometimes one and then the other would be kept back out of sight. On his trip to Lawrence Hillman was vaccinated; his arm was quite bad. Hillmon kept at that man until he let him vaccinate him, which he did, taking his pocket knife and using virus from his own arm for the purpose. He also traded clothes with him, Hillmon first giving
100 him a change of underclothing; then traded suits, the one he was killed in. The suit he was buried in was a suit Hillmon traded with Baldwin for. This man appeared to be a stranger in the country, a sort of an easy-go-long fellow, not suspicious or very attentive to anything. His arm became very sore, and he got quite stupid and dull. He said his name was either Berkley or Burgis, or something sounding like that. We always called him Joe. He said he had been around Fort Scott awhile, and also had worked about Wellington or Arkansas City. I don't know where he was from, nor where his home or friends were. I did not see him at Wichita that I know of. I had but very little to say to the man and less to do with him. He was taken in charge by Hillmon and yielded willingly to his will. I dreaded what I thought was to be done, and kept out of having any more to do with him than possible. I frequently remonstrated with Hillmon and tried to deter him from carrying out his intentions of killing the man. The next evening, after we got to the camp last named, the man Joe was sitting by the fire. I was at the hind end of the wagon, either putting feed in the box for the horses or taking a sack of corn out, when I heard a gun go off. I looked around and saw the man was shot, and Hillmon was pulling him away around to keep him out of the fire. Hillmon changed a day book from his own coat to Joe's and said to me everything was

all right and in shape just as he wanted it, and that I need not be afraid but it would be all right. He told me to get on a pony and go down to a ranch about three-quarters of a mile and get some one to come up. He took Joe's valise and started north. This was about sundown. We had no arrangements about communicating with each other. He first proposed to do so, but I told him I did not want to know where he was; that in case I should I might find out in some other way. I have never heard a word from him since. At Lawrence Mrs. Hillmon gave me to understand that she knew where Hillmon was, and that he was all right. The man over whom an inquest was held at camp, afterward at Medicine Lodge, and at Lawrence, Kansas, was the man Joe Burgis, or Berkley, killed by Hillmon as related above, and John W. Hillmon I believe to be still alive; at least he left our camp and went north, as stated above, after killing Joe. Hillmon said he would assume the name of William Marshall. Baldwin's wife and Mrs. Hillmon know all about this. In my testimony at Lawrence I stated the route taken as above described, but the man who I described as being in camp with us, and who I said went off with some wagons, was Joe, the man killed. I afterwards, some time in August, 1879, made four affidavits under great importunities from Baldwin, who came after me three different times, the last time persuading me to go with him to Kansas City, where Honorable Samuel Riggs insisted on my signing them. I don't think Mr. Riggs is aware of the facts in this case, nor the other counsel in the case. I make the above statement in this Hillmon case as the full and true facts in the case, regretting the part that I have taken in the affair."

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The last question is objected to by counsel for the plaintiff for the following reasons: First, because it calls for testimony which is immaterial and irrelevant to the issues in this case; second, because it is not a cross-examination concerning any matter inquired about by the plaintiff in the examination-in-chief; third, because no conversations or statements held or made by the witness and W. J. Buchan or either of them when the plaintiff was not present or to which she has not given her assent are competent or admissible against her; fourth, because it is sought by the question and answer to prove the contents of a written document which is now in existence and within the control of the defendants in the action, which document must be produced to the witness and identified by him and then offered as the best evidence of its contents; fifth, because it is not competent to prove in this way that the statement was made under oath, the original statement being in existence and under the control of the defendant; sixth, because the question calls for confidential communications between the witness and his attorney, W. J. Buchan, which are privileged and to contradict which the said W. J. Buchan cannot be called as a witness; seventh, because the evidence called for is otherwise incompetent. Sustained, and exception saved by defendants.

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A. Part of that I remember stating, and part I don't remember anything about.

Q. 1245. Did you not sign this statement in the presence of and swear to it before Francis M. McDonald, at his office, in Parkville, Missouri, on the 4th day of September, 1879?

Objected to on same grounds as question last preceding. Sustained, and exception by defendants.

A. I wouldn't be positive now whether I did or not.

Q. 1246. Did you or did you not sign this statement in the presence of and swear to it before Francis M. McDonald, at his office, in Parkville, Missouri, on the 4th day of September, 1879, or at any other time?

Objected to by plaintiff on the same ground as question No. 1244, and for the further reason that the question has been repeatedly asked of this witness and fairly answered. Sustained, and exception saved the defendants.

A. I wouldn't be positive whether I did or not, at McDonald's office, and if I didn't, I didn't do it anywhere else.

Q. 1247. Did you sign this statement in the presence of
103 Francis M. McDonald and W. J. Buchan, at the office of McDonald, at Parkville, Missouri, on the 4th day of September, 1879, or at any other time?

Objected to by the plaintiff on the same grounds as question last preceding. Sustained, and exception saved by defendants.

A. I wouldn't be positive now whether I did or not.

Q. 1253. Did not this statement, the statement referred to in question No. 1244, have attached to it the following words at the time you tore it up and put it in the stove at Buchan's office: "Subscribed in my presence and sworn to before me this 4th day of September, A. D. 1879—my term expires on the 2nd day of April, 1883—Francis M. McDonald, notary public"?

Objected to by plaintiff on grounds stated in objection to question No. 1244. Sustained, and *objection* saved by defendants.

Q. 1254. Did this statement that you tore up and put in the stove at Buchan's office, in the presence of Buchan and Mrs. Hillmon, have attached to it the words quoted in question No. 1253?

Objected to by plaintiff on same grounds as stated in objection to question No. 1244, and for the further reason that the same question has just been asked and fairly answered. Sustained, and exception saved by defendants.

Q. 1255. Did you examine it to see whether these words were attached to it?

A. No, sir.

Q. 1256. Did the statement which you tore up and put in the stove at Buchan's office, in the presence of Mrs. Hillmon, have the impression of a seal of any kind on it?

Objected to by plaintiff as incompetent for the reasons stated in

objection to question No. 1244. Sustained, and exception
104 saved by defendants.

Q. 1268. Does question No. 1244 of this deposition contain a correct statement of the contents of the paper or statement written by Buchan in your brother's house at Parkville, Missouri, on or about the 4th day of September, 1879, which was present on the same day in the office of Francis M. McDonald, in Parkville, Platte county, Missouri, at the same time you and W. J. Buchan were there, which paper or statement you afterwards tore up and threw into the stove in the office of said Buchan, in the city of Wyandotte, Kansas? If not, state wherein the statement contained in said question differs from the statement, above referred to, which you tore up in Buchan's office.

Here the notary is requested to read to the witness the statement contained in the quoted part of the said question, which he here does.

Objected to by plaintiff on the same grounds as stated in objection to question No. 1244. Sustained, and exception saved by defendants.

The objections to questions 1244 to 1268, inclusive, were sustained on the ground that it appeared that the original affidavit signed by Brown was in existence and in possession of defendants' counsel, and that therefore it should have been produced and shown to the witness, and that the copy in the deposition could not now be read to the jury whilst the original was at hand and capable of production; to which ruling the defendants excepted, and thereupon defendants' counsel for the present withdrew said questions and answers, with leave to again offer same. On the day following defendants' counsel offered to read said copy of said affidavit and the questions and answers based thereon to the jury; but the court held that the same could not be read unless the defendants produced the original affidavit; to which ruling the defendants duly excepted.

105 Be it further remembered that subsequently the original affidavit was produced by defendants' counsel and read in evidence to the jury.

Be it further remembered that thereupon the plaintiff, to further sustain the issues on her part, then produced as a witness Dr. N. Simmons, who, being first duly sworn, testified, among other things, as follows:

Dr. SIMMONS, a witness for the complainant.

Direct examination—questions by Mr. HUTCHINGS:

Q. Where do you reside?
A. In Lawrence, Kansas.
Q. How long have you resided in Lawrence?
A. I have resided in Lawrence and vicinity for nearly 20 years—since 1868.
Q. What is your occupation?
A. Practicing medicine.

Q. How long have you been practicing medicine?
A. Nearly 35 years.
Q. How long have you been practicing medicine in Lawrence, Kansas?
A. Since 1868.
Q. Were you acquainted with John W. Hillmon in his lifetime?
A. Yes, sir.
Q. When did you first become acquainted with him?
A. I think it was in 1872.
Q. Where?
A. In 1872 or 1873. I think it was in the winter, perhaps, of 1872, or possibly after, in the early part of 1873; I am not positive; it was about that time.

Q. Where was that?
106 A. That was in Jefferson county, just across the line from Douglas county.

Q. State if at that time you were residing in Jefferson county.
A. Yes, sir.
Q. On your farm?
A. Yes, sir.
Q. You have a farm there?
A. Yes, sir.
Q. How did you become acquainted with him?
A. Mr. Hillmon was taking care of a lot of cattle in the vicinity of my place, and I had a large quantity of hay to sell.
Q. Did that acquaintance continue until the time when he was alleged to have been killed?
A. Well, I saw him occasionally during that time.
Q. State if you were ever employed by him in the capacity of a physician.
A. I can't give the exact date, but perhaps in the year 1872 he met with an accident and had quite an injury on his face. In handling cattle in some way he received it; I could not tell how. I do not remember exactly how he received it—either by the kick of an animal or being thrown against a fence. He received a wound on his nose—in the center of the nose, running down across the eye—about an inch and a half long; something near that.
Q. On which side of the nose?
A. On the left side.
Q. Did he come to you for treatment?
A. Yes, sir.
Q. About how far up the nose from the end, from the lower end, of it was that injury?

A. Well, I think it was about the middle of the nose.
107 Q. Did this injury leave any visible scar, according to your recollection?
A. I never noticed whether it did or not.

Picture marked Exhibit "C" shown witness and witness asked: Do you recognize that photograph as the picture of any party you have ever known?

Objected to by the defendants because it is incompetent, irrelevant, and immaterial. It is not shown that the picture is an original picture. It is not shown that the negative from which it was taken is the same as produced by the camera, without having been retouched or altered. It is incompetent to prove a photograph in that way. The authorities are that the artist who took the picture must be produced and show that he took the picture, and that it is a correct representation of the original of which it claims to be a picture.

Objection overruled, and exception saved by each of the defendants.

A. Yes, sir.

Q. Of whom is that a picture?

Same objection. Overruled, and exception saved by each of defendants.

A. I think it is a picture of John W. Hillmon.

Photograph marked "Exhibit H" is shown witness and witness asked: Is that photograph last shown you a picture of any one you have ever known?

Same objection. Overruled, and exception saved by each of defendants.

A. Yes, sir.

Q. Of whom is that a picture?

Same objection. Overruled, and exception saved by each of the defendants.

A. I think it is a better picture than the other of John W.
108 Hillmon.

Two photographs endorsed on the back "O. P. S., March 2, 1888," shown witness and witness asked: Have you ever seen those photographs before?

A. Yes, sir.

Q. On the front-view picture I will call your attention to the mark on the nose. Will you please to state how the location of the mark on that nose corresponds with the position or location of the injury on the John W. Hillmon's nose which you treated?

Objected to as not being competent to prove it in that way. Let him state where the location was on the nose and where it is upon the photograph, and the jury can see just as well as this witness can tell. It is nothing that requires expert testimony.

Objection sustained.

Q. Are you able, from an observation of the picture in your hands, the front view of the dead man, to locate the point of injury to the nose which you were called upon to treat?

Objected to as incompetent. Overruled, and exception saved by defendants.

A. I think so.

Q. Is there any mark on the nose of the picture referred to which indicates the place of that injury?

Objected to as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants. Witness may state where the injury was on Hillmon's nose, and the photograph is the best evidence as to where the defect is located.

A. I see a defect on the nose that would indicate that there was an injury or deformity of some kind.

109 Q. State whether that defect is located on the nose in the place compared with the place where the injury on Hillmon's nose occurred.

Same objection. Overruled, and exception saved by defendants.

A. Yes, sir; it is about the same point, I think, as near as could be located.

Q. Did you hear the testimony of Mr. Paddock—the deposition that was read on the trial this afternoon?

A. Yes, sir.

Q. What would be the probable result from a wound of the kind described by that witness, as to the immediate falling of the person injured?

Objected to as incompetent and irrelevant and immaterial. Sustained.

Redirect examination—questions by Mr. HUTCHINGS:

Pictures of the corpse shown witness and witness asked, What is your best judgment? What are these pictures of? Doctor, state to the jury what they are.

Objected to as incompetent and irrelevant and immaterial. Overruled, and exception saved by defendants. It is not shown that the photograph is an original picture or that it is a correct representation of the person whose picture was taken. It is not shown that the negative is the same as produced by the camera without retouching.

A. They seem to be the pictures of a corpse that is considerably decayed and so disfigured by decay——

Q. You stated that you might not say positively as to whether they were the pictures of any one that you ever knew. What is your best judgment in regard to the matter?

Same objection as to question last above objected to. Objection overruled, and exception taken by defendants.

110 A. I should not like to say they were a picture of anybody that I know.

Q. I do not ask you to say that. I ask, What is your best judgment, what is your best opinion, in regard to the matter?

Same objection. Overruled, and exception saved.

A. They may be the picture of Mr. Hillmon or they may not be. I could not say.

Q. Why are you not able to say or to express an opinion as to whose pictures those photographs are?

Objected to as incompetent, irrelevant, and immaterial. Overruled, and exception saved.

A. Simply because of the change in the natural appearance. There is no expression there that I can identify. The eyes are obliterated. That is why I cannot recognize them. The change is too extensive for my meager knowledge of him. If I had been much more intimately acquainted with him I might have done better in that line, probably.

Be it further remembered that thereupon the plaintiff, to further sustain the issues on her part, produced as a witness REUBEN BROWN, who, being first duly sworn, testified, among other things, as follows:

Direct examination:

Q. Were you acquainted with W. J. Buchan, an attorney of Wyandotte, in the year 1879?
A. Yes, sir.
Q. How long had you been acquainted with Mr. Buchan prior to that time?
A. As near as I can recollect, 15 or 20 years.
Q. Did you know John W. Hillmon in his lifetime?
A. No, sir.
111 Q. Had you ever seen him?
A. I only saw him once.
Q. Where was that?
A. That was on Main street, in Kansas City.
Q. When was that?
A. Well, I don't recollect what time of the year. I don't have any recollection what time of the year it was.
Q. Do you remember the circumstances of his alleged death in Barbour county, Kansas?
A. Well, yes, sir; I remember my brother telling me what had happened.
Q. Do you remember of hearing of an inquest that was held in Lawrence in which your brother was a witness?
A. Yes, sir.
Q. How soon after that did you see your brother, John H. Brown?
A. Well, it must have been a week or ten days afterwards; somewhere along about that.
Q. State where you saw him.
A. At my house.
Q. When did he come to your house?
A. I think it was about the last of March or first of April.
Q. How long did he remain at your house?
A. He staid there until the next day, in the afternoon, I think.
Q. Where did he start to from your house that afternoon?

A. I don't remember the place now. It was down on the Missouri river, where they were building a bridge.

Q. Did you see Mr. Buchan very soon after that?

A. Yes, sir.

112 Q. Where did you see him?

A. I saw him at his office, in Wyandotte.

Q. How came you to go to his office?

A. He wrote for me to come; that he wanted to see me.

Q. State what conversation you had with Mr. Buchan at that time, at his office.

Objected to by defendants as incompetent, irrelevant, and immaterial and hearsay. Overruled, and exception saved by defendants.

A. He told me—he asked me where my brother John was. I told him I didn't know. "Well," he says, "I want to know where he is; I want to see him;" and I told him that I didn't know, but that I could go and look for him.

Q. What was said about any trouble that he was in, if anything?

Objected to by defendants as incompetent, irrelevant, and immaterial and hearsay. Overruled, and exception saved by defendants.

A. Well, he said he had heard that he had got into trouble and he wanted to get him out of it; that he had been employed by my father and brother to get him out of this trouble, and he wanted I should hunt him up; and I told Buchan where he started to, and I said I would go down and hunt him up and bring him back, so he could have a talk with him. That is about the substance of the conversation. That is about what was said at that time.

Q. Where did you go from Mr. Buchan's office?

A. I went from there, I think, right straight down to Orrick, Missouri. I think I left his office and went right down to Orrick. On the way to the place my brother told me he was going, too.

Q. Where is Orrick?

A. It is 15 or 20 miles below Kansas City.

113 Q. When did you next see Buchan after that?

A. The next I saw him was at my house.

Q. Who came there with him?

A. A fellow by the name of Ward.

Q. Who was Ward?

A. He was the deputy sheriff, I think, of Wyandotte county, or constable. I don't recollect whether he was constable or deputy sheriff.

Q. Where was your brother at that time?

A. He was hauling lumber or wood—I forget which it was—about half a mile from where I lived.

Q. About what time of day did Buchan and Ward arrive at your house?

A. About ten o'clock, I should judge, in the morning.

Q. State how Buchan—how did he come over?

A. He came over in a buggy.

Q. State what transpired after he came over.

A. He asked me where Brother John was, and I told him.
Q. What did you tell him?
A. I told him he was hauling lumber or wood—I forget which it is now—from the mill to the railroad depot.
Q. Then where did Buchan go?
A. They went up to the mill, about half a mile from our house.
Q. Did they return?
A. Yes, sir.
Q. When they got back to your house what did they do?
A. They put their teams up and went and got dinner.
Q. Did you ask them to dinner?
A. Yes, sir.
114 Q. Well, what was done between the time they put up their teams and dinner time?
A. Well, Buchan and John were out in the lot talking.
Q. After dinner was there any conversation between Mr. Buchan and your brother John?
A. Yes, sir.
Q. Where was that conversation had?
A. They went up in the orchard.
Q. Where did they go from the orchard?
A. They came back into the barn lot.
Q. Did you have any conversation with Buchan there?
A. Yes, sir.
Q. State what it was. What did he say to you and what did you say to him?

Objected to by defendants as incompetent, irrelevant, and immaterial and hearsay. Overruled, and exception saved by defendants.

A. Mr. Buchan said that John was very firm in this matter, and that he ought to do something; that he was liable to be arrested at any time, and that he was doing it for his own good, and that he didn't get anything for this work; that he wanted to get him out of trouble, and he wanted me to go and talk with him and tell him just how it was and get him to make a statement different from what he had made; that the deputy sheriff was there, and he didn't know, if John didn't do something, what might turn up. That was about the words.
Q. What did you say in reply to that?

Objected to by defendants as incompetent, irrelevant, and immaterial and hearsay. Overruled, and exception saved by defendants.

A. He said that he wanted to get John out of trouble. He
115 was doing it for his own good, and if he didn't make a different statement from what he had made he would put himself into trouble.

Redirect examination:

Q. When John left your house and rode away with your horse what did he go for?

Objected to as incompetent, irrelevant, and immaterial.

A. He went down to work.

Q. Can you remember the place he started for—the name of the place he started for?

A. Right now I can't. It is away below Orrick. They were building a bridge across the Missouri river. I don't know the name of it now.

Q. Was it Poachport?

A. Yes, sir; that was the name.

Defendants move to strike out what the witness said in regard to the purpose for which John H. Brown was going away. He states that all he knows about it is what he said. Motion granted.

Mr. BARKER: I desire to submit a motion to strike out all the witness' testimony in regard to all these conversations with Buchan and Brown. Motion overruled, and exception saved for each of the defendants.

Be it further remembered that thereupon the plaintiff, to further sustain the issues upon her part, next introduced and read by consent a copy of the testimony given at a former trial of these cases by Levi Baldwin as a witness, who, being duly sworn, testified at such former trial, among other things, as follows:

Direct examination:

Q. What relation are you to Mrs. Hillmon?

A. Second cousin.

Q. When did you last see John W. Hillmon alive?

116 A. In the spring of 1879.

Q. Where?

A. At Lawrence, Kansas.

Q. When and where did you next see him, and what condition was he in at that time?

A. I next saw him at Medicine Lodge.

Q. Well, go on.

A. Buried; he was in the cemetery.

Q. How came you to go to Medicine Lodge?

A. I went at the request of Mrs. Hillmon.

Q. For what purpose?

A. To ascertain about the condition and state of affairs and fetch his body to Lawrence.

Q. What did you do after you arrived at Medicine Lodge?

Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved.

A. I consulted the people and physicians in regard to taking the remains home.

Defendants move to strike out the answer of the witness, for the reason that the same is incompetent, irrelevant, and immaterial. Overruled, and exception saved.

Q. Go on and state what further you did.

Objected to as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. They thought it was not best at that time. I made preparations for fixing the grave.

Defendants move to strike out that portion of the answer, "They thought it was not best at that time," as not being responsive
117 to the question and as being incompetent and immaterial testimony. Overruled, and exception saved by defendants.

Be it further remembered that thereupon the plaintiff, to sustain the issues in her behalf, produced as a witness JOHN ELDRIDGE, who being duly sworn, testified in part as follows:

Direct examination—questions by Mr. HUTCHINGS:

Q. Where do you live?
A. Lawrence, Kansas.
Q. How long have you lived in the city of Lawrence?
A. About 15 years.
Q. What is your occupation?
A. I am in the livery business.
Q. How long have you been in the livery business?
A. Ten or eleven years.
Q. Were you acquainted with John W. Hillmon in his lifetime?
A. Yes, sir.
Q. When did you first become acquainted with him?
A. Well, I was acquainted with him before I went into the livery business—about a year or such a matter.
Q. During the time of your acquaintance with him, what business was Hillmon engaged in?
A. The first time I knew him he was herding cattle.
Q. What business was he subsequently engaged in?
A. Well, I only know of his buying hogs.
Q. Where did he have his headquarters?
A. Well, he was buying hogs at my place.
Q. When was that?
A. I have forgotten; it was just shortly after his marriage.
118 Q. What time of the year?
A. I think it was along in October.
Q. At about the time he was buying hogs at your stable at your place, you may state if you knew of his having any money.
A. I know of his having money just before he commenced buying hogs.
Q. State what you saw with regard to the money he had.

Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. I could not say how much. He had it in three or four packages, wrapped up in a newspaper; I could not say how much there was.
Q. Did you notice the denomination of the bills?

Same objection. Overruled, and exception saved by defendants.

A. I saw tens and I saw one or two fifties.

Q. How large a package was it that he had?

Same objection. Overruled, and exception saved by defendants.

A. Well, I could not say as I remember right. I think there was three packages, and out of one of the packages he took a ten-dollar bill and he gave it to me—he owed me eight dollars for livery hire—and I gave him his change back.

Q. State how thick the packages were.

Same objection. Overruled, and exception saved by defendants.

A. Well, I could not tell. I remember there were three packages; they were probably—I should think they were an inch thick, I should judge.

Q. Each one of them that thickness, you should judge?

Same objection. Overruled, and exception saved by defendants.

A. Yes, sir.

Be it further remembered that thereupon the plaintiff, to
119 further sustain the issues upon her part, testified in her own behalf, among other things, being first duly sworn, as follows—it being shown that A. L. Selig was the agent of the Connecticut Mutual Life Ins. Co. to whom the policy sued on was sent for delivery:

Q. Are you acquainted with Mr. A. L. Selig, who resides in Lawrence?

A. Yes, sir.

Q. Did you go to Mr. Selig's office to see him at any time after your husband, John W. Hillmon, left the last time and before his death?

A. Yes, sir.

Q. How did you come to go to Mr. Selig's office?

A. He sent me a note to call at his office.

Q. About what time was that?

A. It was some time in March; from the 10th to along about the 15th of March.

Q. What time of the day did you go to his office?

A. I think it was in the afternoon.

Q. Did you have any conversation with him there at that time?

A. Yes, sir.

Q. In relation to what matter?

A. To a policy.

Q. In relation to one of the policies in this suit?

A. Yes, sir.

Q. Where was that policy?

A. He had it.

Q. In whose hands?

A. Mr. Selig.

Q. Now, then, what was said between you and Mr. Selig in relation to the policy?

120 Objected to on the ground that it is incompetent, irrelevant, and immaterial. Objection overruled, and exception saved by defendants.

A. I think it was the Connecticut Mutual.
Q. Was the policy in the hands of Mr. Selig at that time?
A. Yes, sir.
Q. From whom did you receive that policy?
A. Mr. Selig.
Q. At that time?
A. Yes, sir.

Defendants object to the last two questions as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

Q. What was said between you and Mr. Selig in relation to the policy at the time you obtained it?

Objected to by defendants on the ground that it calls for a conversation between them and because it is incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

Defendants also save special exception in behalf of the companies for which there is no claim that he was the agent, and on behalf of all the companies.

A. I went to his office and he told me that the policy had come, and he offered it to me. I told him, No; that my husband had written me——
Q. Have you got that letter?
A. I think so.
Q. Go on and state what you told him.

Objected to on the same grounds as contained in objection last above. Objection overruled, and exception saved by defendants.

A. I told him my husband said I could call and get the money and not take the policies; that he would be home in a short time and he could not carry those policies, and Mr. Selig said that I had better take the policies, because if any accident should happen — him out in that wild country that I would have that much more
121 money, and if I should cancel it it would be only a small amount at the present time and it might be of great use by and by.
Q. What did you reply?

Objected to on the same grounds as contained in the objection last above. Objection overruled, and exception saved by the defendants.

A. I told him I would prefer the money, and he said no; I had better take his advice and keep the policy.
Q. What did he say about the premiums having been paid.

Same objection. Overruled, and exception saved by defendants.

A. He said it was all paid for.

Q. When you asked him to return the premium did he refuse to do so?

Objected to as incompetent, irrelevant, and immaterial and hearsay. Overruled, and exception saved by defendants.

A. Yes, sir. He insisted that I should take the policy.

Q. What did he say?

Objected to as incompetent and hearsay. Objection overruled, and exception saved by defendants.

A. He refused to give me the money and told me to take the policy.

Q. What did you do?

A. I took the policy.

Be it further remembered that, evidence touching the size of the foot of John W. Hillmon & also of the corpse having been introduced, thereupon the plaintiff, to further sustain the issues on her part, produced as a witness HENRY S. CLARK, who, being first duly sworn, testified in part as follows:

122 Q. Do you remember the time when the body of a person alleged to have been John W. Hillmon was brought back from Medicine Lodge to Lawrence?

A. Yes, sir; I recollect it.

Q. Do you remember—did you see the dead body?

A. Yes, sir.

Q. Did you try on the boot that he wore—that was brought back?

A. I tried on a rubber boot that was in a trunk that was said to be his effects.

Q. How did that boot fit your foot?

Objected to as incompetent, irrelevant, and immaterial by defendants. Overruled, and exception saved by defendants.

A. That boot was too long for my foot.

Q. How much?

Same objection. Overruled, and exception saved by defendants.

A. I should think a size and a half; possibly two sizes.

Q. What size boot or shoe do you wear?

Objected to by defendants as incompetent, irrelevant, and immaterial. Objection overruled, and exception saved by defendants.

A. I wear a number 7.

Q. Mr. Clark, at that inquest you were sheriff then, you said?

A. Yes, sir.

Q. Did you serve any subpœna upon Mrs. Hillmon to produce any pictures upon that inquest?

Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. Yes, sir.

Q. Did you receive any pictures from Mrs. Hillmon, or were there any delivered there at that inquest?

Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. Yes, sir.

Q. Did you see among those pictures obtained from Mrs. Hillmon a tintype of John H. Brown and Mr. Hillmon together, standing?

123 Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. I did.

Q. When did you last see that picture?

Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. The last I saw of that I handed it to the county attorney, Mr. Green.

Q. Mr. Green here, counsel for the defendants?

A. Yes, sir.

Q. Where was that?

Objected to by defendants as incompetent, irrelevant, and immaterial. —, by defendants.

A. It was in the court-room where the inquest was being carried on.

Be it further remembered that, plaintiff having rested her case, thereupon the defendants, to support the issues in their behalf, introduced evidence tending to show that the body found by the campfire on Crooked creek on the evening of March 18th, 1879, was not the body of John W. Hillmon; also evidence tending to impeach the credibility of John H. Brown; also evidence tending to identify the body found in the camp on Crooked creek as being that of one Frederick Adolph Walters. Defendants also introduced testimony touching the pecuniary standing and ability of John W. Hillmon at the date of the procuring the insurance upon his life. Defendants also introduced in evidence the several releases signed by plaintiff and pleaded by defendants; also evidence tending to show when, where, and under what circumstances plaintiff signed the same.

124 Be it further remembered that A. L. Selig, being called as a witness by the defendants, testified, among other things, that he was present in Dr. Stuart's office when John W. Hillmon was measured by Dr. Stuart, as testified to by the latter; that Hillmon stood up by the door casing, something was placed over his head, and measurement taken either with a rule or tape-line; that the witness Selig did not hold the rule or tape-line, but saw Dr. Stewart make the measurement; that he looked at the measure, but could not tell what the height of Hillmon was without being told by the person making the measurement; that the knowledge that he had as to the height of Hillmon was derived from what Dr. Stuart stated at the time of the measurement.

Thereupon plaintiff moves to strike out the witness' statement that Hillmon was five feet nine inches high as not being within his own knowledge. Motion sustained, and duly excepted to by defendants.

And, being further interrogated, testified as follows:

Q. They proved by you the other day that you were an insurance agent. I will ask you if it is the practice or the custom of insurance men for people to solicit insurance, or is it the other way? Do companies or their agents usually solicit parties to become insured?

A. We generally—our work consists in soliciting the insurance.

Q. State whether or not it is a usual thing for a man to go into the office and apply for insurance without being solicited by any one.

—. No, sir; it is rather unusual.

Q. You may state whether or not twenty-five thousand dollars is a usual or unusual amount of insurance for one person to have, taking into consideration your experience as an agent.

Objected to as irrelevant and immaterial. Sustained, and exception saved.

Q. How long have you been engaged in the life-insurance business?

125 A. Fifteen years.

—. State whether or not you have the means of knowing to a considerable extent the amount of insurance usually carried by people.

A. Approximately only.

Q. Has that knowledge been derived from the business you have carried on?

A. Yes, sir.

Q. State whether or not you have taken considerable, many applications during that fifteen years.

A. Yes, sir.

Q. State whether or not it has been largely from the vicinity of Lawrence and in that vicinity.

A. Yes, sir.

Q. And been confined entirely to the State of Kansas?

A. Yes, sir.

Q. Now you may state if you ever knew of a party worth three to four thousand dollars carrying twenty-five thousand dollars life insurance.

Objected to as immaterial and irrelevant. Sustained, and exception saved.

Q. You may state whether or not twenty-five thousand dollars would be an ordinary or an exceedingly large amount of insurance for a person in those circumstances to carry, so far as your experience is concerned.

Objected to as immaterial and irrelevant. Sustained, and exception saved.

Be it further remembered that there was evidence tending to show that when the policies were issued the companies knew the amount of insurance applied for by Hillmon.

126 Be it further remembered that the defendants next offered the testimony of Mrs. G. A. Nichols, taken at Leavenworth, Kansas, in 1885, upon a former trial *for* the cause and by consent read as her deposition in this trial. Contained in said deposition was the question, "Do you know anything in regard to the scar on his hand?" "Well, I didn't see the scar that I remember of, but I heard him and my husband talking about it while I was getting supper in the evening, but I didn't notice it."

Thereupon plaintiff moves to strike out the answer of the witness as incompetent, irrelevant, and hearsay. Motion sustained; to which ruling the defendants duly excepted.

Be it further remembered that in the same deposition the following question was put to the witness, it appearing that she was a sister of John W. Hillmon and had testified that John W. Hillmon had lost a front tooth:

Q. "Now, in regard to the other members of the family—how about their teeth?"

Which question was objected to as being incompetent and irrelevant. Objection sustained, and the defendants at the time duly excepted.

Also the question, "Have you bad teeth?"

Objected to as incompetent and irrelevant. Question sustained, and the defendants duly excepted.

Also the question, "Did you and your brother, John W. Hillmon, have any conversation concerning teeth at that time?"

Objected to by plaintiff as being incompetent, immaterial, and irrelevant. Said objection was by the court sustained; to which ruling the defendants duly excepted.

127 Be it further remembered that the defendants next produced as a witness W. J. Buchan, who testified in part as follows:

That he was a lawyer; was acquainted with John H. Brown, his father and brothers; that in the latter part of March or first of April, 1879, John H. Brown's father told him that John was in trouble at Lawrence; he wanted him to look after him; that witness further testified that he had two interviews with John H. Brown—the first being in the latter part of April, 1879, or possibly the first of May, this interview being at Lexington; that at that interview John H. Brown detailed to him what he claimed were the facts in regard to his and Hillmon's trip through Southern Kansas, the same being substantially what was afterwards put in writing; that he saw John H. Brown again a month or more afterwards—possibly in June or July—at Parkville, Missouri; that the witness went down to see Brown, in pursuance of a conversation had with one of the attorneys for the defendants, for the purpose of ascertaining what Brown's intentions were; that he again saw Brown about the 4th of September, 1879, in the neighborhood of Parkville, Mis-

souri; that it was at this interview that the written affidavit, signed by John H. Brown, dated 4th of September, 1879, was made out and signed by Brown.

Witness testified further to conversations had at these several interviews with John H. Brown and to the circumstances leading to the execution of the written affidavit of September 4th, his testimony tending to show that Brown made the statements concerning the transactions set forth in the written affidavit voluntarily, and for the purpose of escaping trouble on his part, and to prevent being prosecuted at the instance of the insurance companies.

Witness testified further that he subsequently met Mrs. Hillmon at Leavenworth, Kansas; that the following questions and
128 answers are part of his testimony:

Q. State what took place between you and her in reference to the signing of these releases.

A. I had but very little talk with Mrs. Hillmon up to that time about it. We went to the Planters' House and got a room there, but I can't recollect the talk. She was willing to do what she was doing; was willing to sign these papers. She and John did most of the talking.

Q. State whether you urged her to sign the releases or not.

A. No, sir. She came there for the purpose of signing these releases. Her mind was fully made up to sign them.

On motion of plaintiff the court struck out all of this answer except the words "no, sir," to which the defendants duly excepted.

Q. I will ask you if you stated to her that she could never recover in the cases, and that this would always be a cloud upon her character and reputation.

A. No, sir. There was no such talk as that at all.

Q. What did you say, if anything, about your having taken away her main witness?

A. I never said anything about it. There was no conversation of that kind at all. There was no conversation between her and myself or Brown and myself as to the policy of this or as to the reason for it. She came there to sign those papers, she said, whatever papers were wanted to get these policies, and she wanted John—rather insisted on John's going with her down to Wheat's office to get those policies; but John didn't seem to want to do it, and she and I went. There was no argument nor no talk as to why she should sign those papers.

Q. Look at these releases—they are marked—and state where they were signed.

129 A. They were signed at Leavenworth.

Q. By Mrs. Hillmon?

A. Yes, sir.

On cross-examination witness testified that on one of the occasions when he went to Missouri to try and see John H. Brown Samuel Walker was along; that Walker wished to see Brown, and witness, at the request of Brown's father, went along as a sort of guarantee

that Walker would not arrest Brown nor make any attempt to do so; and thereupon, in further cross-examination, the following question was asked the witness:

"You could not prevent Walker arresting him if he wanted to?
"A. I don't know."

Defendants objected to this question and answer; which objection was overruled, and defendants excepted.

Be it further remembered that, further to sustain the issues upon their part, the defendants next produced as a witness Dr. V. G. MILLER, who, being first duly sworn, testified, among other things, as follows:

Q. You may state, Doctor, if you know the height of John W. Hillmon.
A. I do now. I did not then.
Q. How did you arrive at it?
A. John W. Hillmon came to my office and said he had made a mistake——
Q. How did you arrive at that height?
A. I had a measure on the door or window.
Q. Did you measure him?
A. Yes, sir. He made the statement, and I made a note of it.
Q. Who was present there at that time?
A. I don't know whether there was any one or not; I don't recollect.
130 Q. Mr. Hillmon was there, wasn't he?
A. Yes, sir.
Q. State whether or not you made it in the presence of Hillmon?
A. Yes, sir; I did.
Q. Have you your book?
A. I have the book here in which I made the memorandum.
Q. Under what circumstances did you make that memorandum there?
A. He came to my office and said he had made a mistake as to his height——

Mr. RIGGS: We object to that statement and move to strike it out Sustained, and exception saved by the defendants.

WITNESS: I had a grade of feet and inches on the window or door and I had him stand up there, and I don't know whether I had a pencil or some substance or a book, something of that kind, in my hand, and I ran it over his head, and then I took it direct from the measurement.

Q. What did he measure at that time?
A. Five feet and nine inches.
Q. Look at the date commencing "Lawrence, Kansas," on page 328 of that book now shown you, and state whose handwriting that is in.
A. That is my handwriting.
Q. When did you make that?

A. I made it as dated here, December 17th, 1878.
Q. When, in reference to the time of measuring John W. Hillmon?
A. This was the time that I measured him, and it was made in his presence and read to him.
Q. Now, you may state what that is.

Objected to as incompetent. Sustained, and exception saved by defendants.

131 Q. Look at the book now shown you, marked Exhibit No. 23, at page 328 thereof, and state if at the time you measured John W. Hillmon you made an entry thereof, in that book and upon that page, of the fact.

Question withdrawn and witness asked: State if at the time you made that measurement you made a written memorandum of it. And, if so, what is that statement?
A. I may state that Hillmon called upon me and said that *he* had been a mistake made, and I have just made an effort, and I took his measurement, and I made an entry of the same, and I made it in this book and made it at this time.
By COURT: On what page?
A. On page 328.

WITNESS: I made it in the presence of John W. Hillmon.

Q. Did you make a memorandum of his height?
A. Yes, sir.
—. Did you read that memorandum to John W. Hillmon?
A. Yes, sir; I did.
Q. Did he make any objections?
A. None at all.
Q. At whose request was this memorandum made?

Objected to as calling for incompetent evidence, and because it is of and concerning matters of which oral evidence has been given, of a conversation that occurred and of a statement made in writing. Sustained, and exception saved by defendants.

Mr. BARKER: We will now offer that portion of page 328 in evidence of Exhibit 23 as commencing with the word "Lawrence" and ends with the word "Miller."

Objected to as incompetent and hearsay, and because they have already given oral evidence of its contents. Sustained, and
132 exception taken by defendants.

Copy of Entry Made by Dr. Miller in His Day Book.

LAWRENCE, KANSAS, *December* 17, 1878.

John W. Hillmon called upon me and reported a slight mistake in his height. He, Hillmon, is five feet nine inches in place of five feet eleven inches, as stated in his policy for life insurance in the New York Mutual.

(Signed) V. G. MILLER.

Q. At the time you measured John W. Hillmon there in your office did he remove his boots?
A. No, sir.

Be it further remembered that thereupon, to further sustain the issues on their part, the defendants produced E. B. GOOD, who, being first duly sworn and examined, testified in part as follows:

Q. State your name and where you reside.
A. E. B. Good; Lawrence, Kansas.
Q. How long have you resided in Lawrence?
A. About 22 years.
Q. In what business are you engaged now?
A. Grocery.
Q. State if you remember the fact of a dead body being brought to Lawrence about the 1st of April, 1879, which was at the undertaking establishment of Bailey & Smith, and on which an inquest was held.
A. Yes, sir.
Q. Do you remember of visiting Bailey & Smith's place as a juryman?
A. Yes, sir.

Q. You may state what her conduct was on that occasion,
133 whether it was serious or—just state the facts in reference to that matter.

Objected to as incompetent and immaterial. Objection sustained, and the defendants then and there duly excepted thereto.

Q. I don't ask what she said. I will ask you in regard to her manner of talking with the attorneys and the examining parties in regard to that.

Objected to as incompetent and immaterial. Objection sustained; to which ruling the defendants then and there duly excepted.

Q. State on that occasion what exhibitions of grief, if any, she made.

Objected to as incompetent and immaterial. Objection sustained; to which ruling the defendants then and there duly excepted.

Be it further remembered that thereupon, to sustain the issues in their behalf, the defendants introduced Dr. J. H. STEWART, who, being duly sworn, testified in part as follows:

Q. You may state, if you know, the height of John W. Hillmon.
A. Yes, sir.
Q. State how you came to know that height?
A. By measurement.
Q. How did you measure him there?
A. I measured him by a scale I had on the door in the office.
Q. How did you come to measure him?

Objected to by plaintiff as immaterial and incompetent. Objection sustained, and defendants duly excepted.

Be it further remembered that thereupon, to further sustain the issues upon their part, the defendants next produced as a witness C. R. WALTERS, who, being first duly sworn, testified, among
134 other things, as follows:

That he resided at Rich Hill, Missouri; was a brother of Frederick Adolph Walters; that his father's family resided for many years at Fort Madison, Iowa; that he last saw his brother Frederick Adolph at Holden, Missouri. He thinks it was in the year 1878. Witness testified that he corresponded frequently with his brother, and that since 1879 he had received no letters from his brother. Witness further testified that he had seen the photographs of the body at St. Louis, they having been sent to him by his father.

Witness further testified that his relations with his brother were of the friendliest character, and that the same was true of the relations between his brother and the remainder of his family.

Further testified that since receiving these pictures at St. Louis, which, as he remembers, was in 1879, he has regarded his brother Adolph as dead.

Thereupon this further question was put to the witness:

"Now you may state, if you know, how the other members of the family—your father, mother, and sisters—have regarded your brother Frederick Adolph; whether they have regarded him as being dead since they received those photographs."

Objected to as incompetent, irrelevant, and hearsay. Objection sustained, and the defendants then and there duly excepted.

Witness gave further testimony describing the size, build, appearance, and characteristics of his brother Frederick Adolph.

Witness further testified that he had received a letter from his brother Frederick Adolph written from Wichita, Kansas; that it was the last letter that he had ever received from him; that he had made diligent search for the letter and was unable to find it, and was satisfied that the letter was lost; that he remembered the
135 contents of the letter in question.

Thereupon defendants' counsel offered to prove by the witness the contents of the said letter; to which plaintiff objected as being incompetent, irrelevant, and hearsay. Objection sustained; to which the defendants duly excepted.

On further examination this question was asked the witness:

"Is it not a fact, Mr. Walters, that in 1880 you had no knowledge that your brother had been west of this city (Topeka); that in 1880 you stated in your letter—in one of your letters—that you understood that he died near the city of Topeka?"

Objected to as incompetent, irrelevant, and immaterial. Objection overruled; to which the defendants duly excepted.

A. Well, in 1880 I didn't know the location of Topeka. I didn't know whether Topeka was 400 miles from Kansas City or 40 miles.

Q. The question I am asking now is if it was not your understanding in 1880 that the last you had heard of your brother was from the vicinity of Topeka. Didn't you so understand?

Objected to by defendants. Objection overruled; to which ruling the defendants duly excepted.

A. I don't remember what I understood at that time.

And, being further interrogated, testified as follows:

Q. I wish you would refer to this letter that I showed you here in your handwriting and refresh your recollection.

A. Well, I don't remember. I could not say that he had or had not.

Q. At the time you wrote this letter it was your belief and impression that he had a few fillings in his teeth?

A. I don't know.

Q. You wrote that letter?

136 A. Yes; but I don't think there is anything definite in that letter one way or another. I had no knowledge of his having any filling done or of his not having any. I was merely saying that as my explanation of your previous question.

Witness is handed the letter referred to and asked:

Is that your signature to that letter?

A. Yes, sir; I think it is.

Q. I wish to ask the question. You may state if, in the letter shown you, dated May 22nd, 1880, you did not say——

Objected to by defendants as incompetent, irrelevant, and immaterial, the letter being the best evidence. Objection overruled, and exception saved by defendants.

Q. In that paragraph did you not say: "As regards your other questions, will say my brother, I think, had some dentistry performed on his teeth—a few fillings, perhaps. He also had a high instep and corns on his feet, though I cannot give a more positive description than the one already sent you, aside from this, as my brother and I were only a few times together in the past ten years."

Q. The question is, Did you write or say that in this letter?

Objected to by defendants as incompetent and immaterial. The letter is the best evidence. Objection overruled and exception saved by defendants.

A. I presume I did, if you read it correctly.

Q. Did you not also say in that letter: "He visited me for a week or so, then went to Paola, Kansas, where he remained for a short time; after that he went to Topeka, and in the spring of 1879, towards Lawrence. I received but few letters from him, as he never wrote often.

137 Objected to by defendants as incompetent and immaterial evidence. The letter is the best evidence. Objection overruled and exception taken by defendants.

A. Yes, sir.

Also as follows:

Q. I will ask you to state—look at this portion of the letter to which your attention has been called by the counsel for plaintiff, commencing there——

Question about to be asked by plaintiff is objected to as incompetent, irrelevant, and immaterial. Sustained, and exception saved by defendants.

Mr. BARKER: Then I desire to offer the portion of this letter, it being the same letter to which your attention has been called by the counsel for plaintiff, and in reference to which you were asked questions, commencing with the words "You could gain nothing" and ending with the words "over the sad affair," on page two of the letter; and in the same connection will offer in evidence—I will ask the witness if at the same time he did not write the following words, commencing with the words "my mother" and ending with the words "deranged over the sad affair."

Objected to by plaintiff as hearsay, irrelevant, and incompetent. Objection sustained and exception saved by defendants.

Here follows the portion of the letter offered in evidence:

"You would gain nothing yourself by going to Iowa, as I can and will give you all information in our possession regarding this affair; besides, your going there would be distasteful to my folks, as they are deeply mourning the dead man at Lawrence as their relative, particularly my mother, who is now almost deranged over the sad affair."

Mr. BARKER: I desire to offer in evidence the portion in-
138 cluded in the two brackets there.

Objected to by plaintiff as incompetent, irrelevant, and hearsay. Sustained, and exception saved by defendants.

Here follows the portion of the letter offered in evidence, as follows:

"If there is any doubt of the dead man being my brother, of course the sooner I know it the better; also for all concerned. I have no sympathy for the insurance companies you mention whatever, for they have no interest—at least, but their own—and, of course, no thought of justice in the matter if they really believe the man in question to have been murdered as supposed."

Witness is shown picture of the cadaver and asked: From the time you first saw those pictures in St. Louis, or those similar to that, up to the present time, have you ever entertained any doubt about their being the picture of your dead brother?

A. I never had any doubt.

Q. Have you any doubt now?

A. No, sir.

Be it further remembered that the defendants, to further maintain the issues in their behalf, introduced as a witness Mrs. ELIZABETH RIEFFENACH, who, being duly sworn, testified in part as follows:

Witness testified that she was a sister of Frederick Adolph Walters, living at Fort Madison, Iowa.

The following questions, among others, *was* put to said witness:

Q. Now you may state if you know how the other members of the family—your father, mother, and sisters—have regarded your brother Frederick Adolph—whether they have regarded him as living or dead—since they have received those pictures.

139 Objected to as incompetent, irrelevant, and hearsay. Objection sustained; to which the defendants duly excepted.

Q. You may state how your father regarded this matter after he received this picture—whether he regarded him as dead or living.

Same objection as before. Objection sustained; to which the defendants duly excepted.

Witness further testified that she had received a letter written from Wichita, Kansas, about the 4th or 5th day of March, 1879, by her brother Frederick Adolph; that the letter was dated at Wichita, and was in the handwriting of her brother. She had searched for the letter but could not find the same, it being lost; that she remembered and could state the contents of the letter.

Thereupon defendants' counsel asked the question—

Q. State the contents of that letter.

To which plaintiffs objected on the ground that the same is incompetent, irrelevant, and hearsay. The objection was sustained, and the defendants duly excepted.

The following is the letter as stated by witness:

WICHITA, KANSAS,
March 4th or 5th or 3rd or 4th—I don't know—1879.

DEAR SISTER AND ALL: I now in my usual style drop you a few lines to let you know that I expect to leave Wichita on or about March the 5th, with a certain Mr. Hillmon, a sheep-trader, for Colorado or parts unknown to me. I expect to see the country now. News are of no interest to you, as you are not acquainted here. I will close with compliments to all inquiring friends. Love to all.

I am truly your brother,

FRED. ADOLPH WALTERS.

140 Be it further remembered that defendants introduced as a witness Alvina D. Kasten, who testified that she was twenty-one years of age and resided in Fort Madison, Iowa; was well acquainted with Frederick Adolph Walters; that she was engaged to be married to him; that she last saw him on the 24th of March, 1878, at Fort Madison; he left there at that time and has not returned; that she corresponded regularly with him; received a letter about every two weeks until the 3rd day of March, 1879, which was the last time she received a letter from him; that this letter was dated at Wichita, Kansas, March 1st, 1879, and was addressed to witness at Fort Madison, Iowa, and the envelope was postmarked

"Wichita, Kansas, March 2nd, 1879;" that she had never heard from or seen Frederick Adolph since that time.

Thereupon defendants introduced in evidence the envelope containing said letter, with the postmark thereon, "Wichita, Mar. 2nd;" addressed, "Miss Alvina Kasten, Fort Madison, Iowa, Lee county."

Thereupon defendants offered to read in evidence the said letter written by Frederick Walters to Miss Kasten. Plaintiff objected to the reading of the same; which objection the court sustained, and the defendants at the time duly excepted.

The letter so offered to be read in evidence and ruled out by the court is as follows:

WICHITA, *Mar. 1st*, 1879.

DEAREST ALVINA: Your kind and ever-welcome letter was received yesterday afternoon about an hour before I left Emporia. I will stay here until the fore part of next week, and then will leave here to see a part of the country that I never expected to see when I left home, as I am going with a man by the name of Hill-
141 mon, who intends to start a sheep ranch, and as he promised me more wages than I could make at anything else I concluded to take it, for awhile at least, until I strike something better. There is so many folks in this country that have got the Leadville fever, and if I could not of got the situation that I have now I would have went there myself; but as it is at present I get to see the best portion of Kansas, Indian Territory, Colorado, and Mexico. The route that we intend to take would cost a man to travel from $150 to $200, but it will not cost me a cent; besides, I get good wages. I will drop you a letter occasionally until I get settled down; then I want you to answer it (you bet, honey)—don't it? So you can see that I will not get home for a few months yet, but cannot tell how soon I will get back. I am about as anxious to see you as you are to see me, but I do not want to get back there without a cent of money, for that is what I left for (you know).

When I get back you will get to see me in about the way we parted (you bet). If any one asks you what I am doing, tell them that you were not informed, for it is none of their business, and, another thing, don't ask me to write long letters, for I would without being told if I could find the words when I write, as I am generally busy when I receive a letter from my (old woman) sweet little girl. But you know that without being told, so I will not waste any more paper on that subject (at present). I will have to come to a close before long or I will have to do as that other fellow—write two sheets and swindle the p'master out of three cents, and you know I don't like to do that (pet). Please give compliments to enquiring friends and all the love that you can embrace for yourself and nobody else. I will close for this time, love, to let you hear from me soon again.

Yours as ever, F. A. WALTER.

142 Be it further remembered that the defendants called as witnesses Col. Bradley, Judges Horton, Valentine, Johnston,

and Humphrey, and, having shown that said witnesses were acquainted with W. J. Buchan, the defendants asked each of the said parties the question:

"State the reputation for professional integrity and standing of said W. J. Buchan."

Which question was objected to by plaintiff as incompetent and irrelevant. Objection sustained; to which the defendants duly excepted.

And thereupon the said defendants and each of them prayed that this their bill of exceptions in their behalf might be allowed, which is accordingly done, and upon their motion is signed and ordered to be made a part of the record in this case this 28th day of June, 1888.

O. P. SHIRAS, *Judge.*

Endorsed: Nos. 3147, 3148, 3149. Bill of exceptions. Filed June 28, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

143 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 4th day of June, A. D. 1888, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 3149.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

MONDAY, *Aug.* 6, 1888.

The above-named causes, heretofore consolidated for the purposes of trial and tried *to* the court and jury as one cause, beginning Feb'y 29, 1888, now coming up for hearing upon the motion for new trial filed on behalf of the said defendants, and the plaintiff and the several defendants appearing by their respective counsel, the said motion for new trial was duly argued & submitted to the court, and, having been duly considered, the same is overruled; to which ruling the defendants and each of them duly excepted; and thereupon it is ordered and adjudged that plaintiff have judgment against each defendant upon the verdict rendered against each defendant by the jury, the judgment to be entered against each defendant for the amount of the verdict, with interest from the date of the ren-
144 dition of the verdict, each entry to show exceptions thereto by defendant therein; and thereupon, in pursuance to the

previous order of court, the bill of exceptions tendered by and on behalf of the said defendants and each of them was submitted for examination & settlement, and the same, having been duly examined and corrected, was settled and allowed and ordered to be filed by the clerk as of the date of June 28th, 1888.

June 28, 1888.

O. P. SHIRAS, *Judge.*

145 SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

MONDAY, *August* 6, 1888.

This day this cause coming up for hearing upon plaintiff's motion for judgment, and it appearing that on the 21st day of March, 1888, a verdict for plaintiff had been rendered in said cause awarding damages against the defendant in the sum of fifteen thousand and sixty dollars, and that by order of the court and the consent of parties the hearing upon the motion for new trial filed by defendant had been fixed for June 28th, 1888, and that upon that day the parties had duly appeared before the court and presented said motion for new trial, and that said motion, after consideration, had been overruled and judgment ordered to be entered upon the verdict in favor of plaintiff—

It is therefore ordered and adjudged that the plaintiff herein, Sallie E. Hillmon, have and recover judgment against the defendant, The Mutual Life Insurance Company of New York, for the sum of fifteen thousand and sixty dollars ($15,060), with interest thereon from the 21st day of March, A. D. 1888, and for her costs in this behalf expended, taxed at —, and that she have execution therefor; to which rulings, orders, and judgment the defendant duly excepts.

146 In the Supreme Court of the United States.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Plaintiff in Error, *vs.* SALLIE E. HILLMON, Defendant in Error.

THE NEW YORK LIFE INSURANCE COMPANY, Plaintiff in Error, *vs.* SALLIE E. HILLMON, Defendant in Error. } Consolidated Case.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Plaintiff in Error, *vs.* SALLIE E. HILLMON, Defendant in Error.

Petition in Error.

The said plaintiffs in error, The Mutual Life Insurance Company

of New York, The New York Life Insurance Company, and The Connecticut Mutual Life Insurance Company, complain that heretofore the said defendant in error, Sallie E. Hillmon, duly
147 commenced in the circuit court of the United States for the district of Kansas her separate suit against each of the plaintiffs upon the several insurance policies which they issued upon the life of John W. Hillmon; that thereafter, by the order of said court and against the objections of each of said plaintiffs in error, said separate actions were consolidated and were tried together, and for that reason said plaintiffs in error are joined in this petition in error.

The said plaintiffs in error further complain of the said defendant in error that the said defendant in error, at the June term of the circuit court of the United States for the district of Kansas, A. D. 1888, recovered a judgment against each of said plaintiffs in error by the consideration of said court in the consolidated action then pending in said court, wherein the said defendant in error was plaintiff and the said plaintiffs in error were defendants.

A copy of the record of the judgment and proceedings in each case, duly certified, is attached hereunto, marked "A," and made a part of this petition; and each of said plaintiffs in error aver that there is error in the said records and proceedings, in this, to wit:

1. That the said court erred in making its order consolidating said causes for trial over the objection of each of said plaintiffs in error.

2. That the said court erred in overruling the motion and application of each of said plaintiffs in error, filed in this cause, asking said court to vacate and set aside its said order consolidating said causes for trial.

3. That the said court erred, in the impanelling of the jury in said cause, in refusing to allow each of the plaintiffs in error three
148 peremptory challenges of jurors and in holding and limiting all the said plaintiffs in error to three peremptory challenges only, which was duly excepted to at the time by each of said plaintiffs in error.

4. That the said court erred in admitting the evidence of the witness, John Brown, produced on behalf of the defendant in error, to the following question:

What was the purpose of that trip?

5. That the said court erred in sustaining the objection of said defendant in error to the question asked of the said witness, John Brown, on his cross-examination, as follows:

On the 5th day of April, A. D. 1879, in the office of George J. Barker, in Lawrence, Kansas, were you not shown a postal card from Griffin, Texas, directed to Mr. Brocklesby, city marshal of Lawrence, inquiring if a man by the name of Hillmon lived in Lawrence, and stating in substance that he had a difficulty with a train of cattle; also stating that Hillmon formerly lived near Grasshopper; and if you were not asked if Hillmon was ever at Griffin, Texas, and if in reply thereto you did not state that Hillmon had been at Griffin, Texas, and that you was with him there.

6. That the said court erred in sustaining the objection of defend-

ant in error to question # 1244, asked of said witness, John Brown, on his cross-examination, beginning as follows:

State if the following is the statement made and prepared on the 4th day of September, 1879, at your brother's residence, situated near Parkville, Missouri.

7. That the said court erred in sustaining the objection of defendant in error to the question asked of the said witness, John Brown, on his cross-examination, as follows:

149 Did you not sign this statement in the presence of and swear to it before Francis M. McDonald, at his office, in Parkville, Missouri, on the 4th day of September, 1879?

8. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

Did you or did you not sign this statement in the presence of and swear to it before Francis M. McDonald, at his office, in Parkville, Missouri, on the 4th day of September, 1879, or at any other time?

9. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

Did you sign this statement in the presence of Francis M. McDonald and W. J. Buchan, at the office of McDonald, at Parkville, Missouri, on the 4th day of September, 1879, or at any other time?

10. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

Did not this statement, the statement referred to in question No. 1244, have attached to it the following words at the time you tore it up and put it in the stove at Buchan's office: "Subscribed in my presence and sworn to before me this 4th day of September, A. D. 1879. My term expires on the 2nd day of April, 1883.—Francis M. McDonald, notary public."

11. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

150 Did not this statement that you tore up and put in the stove at Buchan's office, in the presence of Buchan and Mrs. Hillmon, have attached to it the words quoted in question No. 1253?

12. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

Did this statement that you tore up and put in the stove at Buchan's office, in the presence of Mrs. Hillmon, have the impression of a seal of any kind on it?

13. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

Does question No. 1244 of this deposition contain a correct statement of the contents of the paper or statement written by Buchan in your brother's house at Parkville, Missouri, on or about the 4th day of September, 1879, which was present on the same day in the

office of Francis M. McDonald, in Parkville, Platte county, Missouri, at the same time you and J. W. Buchan were there, which paper or statement you afterwards tore up and threw into the stove, in the office of said Buchan, in the city of Wyandotte, Kansas? If not, state wherein the statement contained in said question differs from the statement above referred to, which you tore up in Buchan's office. (Here the notary is requested to read to the witness the statement contained in the quoted part of the said question, which he here does.)

14. That the said court erred in admitting the evidence of the witness, Dr. Simmons, produced on behalf of the defendant in error, to the following question:

151 Picture marked "Exhibit C" shown witness and witness asked: Do you recognize that photograph as the picture of any party you have ever known?

15. That the said court erred in admitting the evidence of the witness, Dr. Simmons, produced on behalf of the defendant in error, to the following question:

Of whom is that a picture?

16. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Photograph marked "Exhibit H" is shown witness and witness asked: Is that photograph last shown you a picture of any one you have ever known?

17. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Of whom is that a picture?

18. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Are you able from an observation of the picture in your hands, the front view of the dead man, to locate the point of injury to the nose which you were called upon to treat?

19. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Is there any mark on the nose of the picture referred to which indicates the place of that injury?

20. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

152 State whether the defect is located on the nose in the place compared with the place where the injury on Hillmon's nose occurred.

21. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Pictures of the corpse shown witness and witness asked: What is your best judgment—what are these pictures of? Doctor, state to the jury what they are.

22. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

You stated that you might not say positively as to whether they were the pictures of any one that you ever knew. What is your best judgment in regard to the matter?

23. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

I do not ask you to say that; I ask what is your best judgment, what is your best opinion, in regard to the matter?

24. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Why are you not able to say or to express an opinion as to whose pictures these photographs are?

25. That the said court erred in admitting the evidence of the witness, Reuben Brown, produced on behalf of the defendant in error, to the following question:

State what conversation you had with Mr. Buchan at that time at his office.

26. That the said court erred in admitting the evidence of the witness, Reuben Brown, to the following question:

What was said about any trouble that he was in, if anything?

27. That the said court erred in admitting the evidence of
153 the witness, Reuben Brown, to the following question:

State what it was. What did he say to you and what did you say to him?

28. That the said court erred in admitting the evidence of the witness, Reuben Brown, to the following question:

What did you say in reply to that?

29. That the said court erred in admitting the evidence of the witness, Reuben Brown, to the following question:

When John left your house and rode away with your horse what did he go for?

30. That the said court erred in overruling the motion of plaintiffs in error to strike out all the conversations between said witness, Reuben Brown, and one W. J. Buchan.

31. That the said court erred in admitting the evidence of the witness, Levi Baldwin, produced on behalf of the defendant in error, to the following question:

What did you do after you arrived at Medicine Lodge?

32. That the said court erred in overruling the motion of plaintiffs in error to strike out the answer of witness, Levi Baldwin, "I consulted the people and physicians in regard to taking the remains home."

33. That the said court erred in overruling the motion of plaintiffs in error to strike out that portion of the answer of the witness, Levi Baldwin, "They thought it was not best at that time."

34. That the said court erred in admitting the evidence of the witness, John Eldridge, produced on behalf of the defendant in error, to the following question:

State what you saw with regard to the money he had.

35. That the said court erred in admitting the evidence of
154 the witness, John Eldridge, to the following question:

Did you notice the denomination of the bills?

36. That the said court erred in admitting the evidence of the witness, John Eldridge, to the following question:

How large a package was it that he had?

37. That the said court erred in admitting the evidence of the witness, John Eldridge, to the following question:

State how thick the packages were.

38. That the said court erred in admitting the evidence of the witness, John Eldridge, to the following question:

Each of them that thickness, you should judge?

39. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, on her own behalf, to the following question:

Now, then, what was said between you and Mr. Selig in relation to the policy?

40. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following questions:

From whom did you receive that policy?

At that time?

41. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

What was said between you and Mr. Selig in relation to the policy at the time you obtained it?

42. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

155 Go on and state what you told him.

43. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

What did he reply?

44. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

What did he say about the premiums having been paid?

45. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

When you asked him to return the premium did he refuse to do so?

46. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

What did he say?

47. That the said court erred in admitting the evidence of the witness, Henry S. Clark, produced on behalf of the defendant in error, to the following question:

How did that boot fit your foot?

48. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

How much?

49. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

What size boot or shoe do you wear?

50. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

Did you serve any subpœna upon Mrs. Hillmon to preduce any pictures upon that inquest?

51. That the said court erred in admitting the evidence of
156 the witness, Henry S. Clark, to the following question:

Did you receive any pictures from Mrs. Hillmon, or were there any delivered there at that inquest?

52. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

Did you see among those pictures obtained from Mrs. Hillmon a tintype of John H. Brown and Mr. Hillmon together, standing?

53. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

When did you last see that picture?

54. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

Where was that?

55. That the said court erred in sustaining the motion of the defendant in error to strike out the statement of the witness, Mr. A. L. Selig, produced on behalf of the plaintiffs in error, that Hillmon was five feet nine inches high.

56. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, A. L. Selig, as follows:

You may state whether or not twenty-five thousand dollars is a usual or unusual amount of insurance for one person to have, taking into consideration your experience as an agent.

57. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, A. L. Selig, as follows:

Now, you may state if you ever knew of a party worth three to four thousand dollars carrying twenty-five thousand dollars life insurance.

157 58. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, A. L. Selig, as follows:

You may state whether or not twenty-five thousand dollars would be an ordinary or an exceedingly large amount of insurance for a person in those circumstances to carry, so far as your experience is concerned.

59. That the said court erred in sustaining the motion of the defendant in error to strike out the answer of the witness, Mrs. G. A. Nichols, produced on behalf of the plaintiffs in error, to the following question:

Q. "Do you know anything in regard to the scar on his hand?"

A. "Well, I didn't see the scar, that I remember of, but I heard him and my husband talking about it while I was getting supper, in the evening, but I didn't notice it."

60. That the said court erred in sustaining the objection of the

defendant in error to the question asked of said witness, Mrs. G. A. Nichols, as follows:

Now, in regard to the other members of the family, how about their teeth?

61. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Mrs. G. A. Nichols, as follows:

Have you bad teeth?

62. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Mrs. G. A. Nichols, as follows:

Did you and your brother, John W. Hillmon, have any conversation concerning teeth at that time?

158 63. That the said court erred in sustaining the motion of the defendant in error to strike out the answer of the witness, W. J. Buchan, as follows:

"No, sir; she came there for the purpose of signing these releases; her mind was fully made up to sign them," with the exception of the words "No, sir."

64. That the court erred in admitting the evidence of the witness, W. J. Buchan, produced on behalf of the plaintiffs in error, to the following question, propounded by defendant in error on cross-examination:

You could not prevent Walker arresting him if he wanted to?

65. That the said court erred in sustaining the motion of the defendant in error to strike out the following answer of the witness, V. G. Miller, to the following question:

Q. Under what circumstances did you make that memorandum there?

A. He came to my office and said he had made a mistake as to his height.

66. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Dr. V. G. Miller, as follows:

Now, you may state what that is.

67. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Dr. V. G. Miller, as follows:

At whose request was this memorandum made?

68. That the said court erred in refusing to admit the testimony offered by the plaintiffs in error of that portion of page 328 in evidence of Exhibit 23 as commencing with the word "Lawrence"

159 and ends with the word "Miller."

69. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, E. B. Good, produced on behalf of the plaintiffs in error, as follows:

You may state what her conduct was on that occasion, whether it was serious or—just state the facts in reference to that matter.

70. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, E. B. Good, as follows:

I don't ask what she said. I will ask you in regard to her manner of talking with the attorneys and the examining parties in regard to that.

71. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, E. B. Good, as follows:

State on that occasion what exhibitions of grief, if any, she made.

72. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Dr. J. H. Stewart, produced on behalf of the plaintiffs in error, as follows:

How did you come to measure him?

73. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, C. R. Walters, produced on behalf of the plaintiffs in error, as follows:

Now, you may state if you know how the other members of the family—your father, mother, and sisters—have regarded your brother Frederick Adolph—whether they have regarded him as being dead since they received those photographs.

74. That the said court erred in that it refused to allow the
160 said witness, C. R. Walters, to state the contents of a letter received by him from his brother, Frederick Adolph Walters, written at Wichita, Kansas.

75. That the said court erred in admitting the evidence of the witness, C. R. Walters, to the following question:

Is it not a fact, Mr. Walters, that in 1880 you had no knowledge that your brother had been west of this city (Topeka); that in 1880 you stated in your letter—in one of your letters—that you understood that he died near the city of Topeka?

76. That the court erred in admitting the evidence of the witness, C. R. Walters, to the following question:

The question I am asking now is if it was not your understanding in 1880 that the last you had heard from your brother was from the vicinity of Topeka? Didn't you so understand?

77. That the said court erred in admitting the evidence of the witness, C. R. Walters, to the following question:

I wish to ask the question: You may state if in the letter shown you, dated May 22nd, 1880, you did not say—

78. That the said court erred in overruling the objection of the plaintiff in error to the following question asked the witness, C. R. Walters, and permitting the same to be answered:

In that paragraph did you not say: "As regards your other questions, will say my brother, I think, had some dentistry performed on his teeth—a few fillings, perhaps. He also had a high instep and corns on his feet, although I cannot give a more positive description than the one already sent you, aside from this, as my brother and I were only a few times together in the past ten years."

79. That the said court erred in overruling the objection
161 of the plaintiff in error to the following question asked the witness, C. R. Walters, and permitting same to be answered:

The question is, Did you write or say that in this letter?

80. That the said court erred in overruling the objection of the

plaintiff in error to the following question asked the witness, C. R. Walters, and permitting same to be answered:

Did you not also say in that letter: "He visited me for a week or so, then went to Paola, Kansas, where he remained for a short time; after that he went to Topeka, and, in the spring of 1879, towards Lawrence. I received few letters from him, as he never wrote often"?

81. That the court erred in sustaining the objection of the defendant in error and in not permitting the plaintiffs in error to introduce that portion of said letter included in the question of the plaintiffs in error, as follows:

I will ask you to state—look at this portion of the letter to which your attention has been called by the counsel for plaintiff, commencing there——

Then I desire to offer the portion of this letter, it being the same letter to which your attention has been called by the counsel for plaintiff and in reference to which you were asked questions, commencing with the words "You could gain nothing" and ending with the words "over the sad affair," on page two of the letter; and in the same connection will offer in evidence—I will ask the witness if at the same time he did not write the following words, commencing with the words "my mother" and ending with the words "deranged over the sad affair."

(Here follows the portion of the letter offered in evidence.)

162 "You would gain nothing yourself by going to Iowa, as I can and will give you all the information in our possession regarding this affair; besides, your going there would be distasteful to my folks, as they are deeply mourning the dead man at Lawrence as their relative—particularly my mother, who is now almost deranged over the sad affair."

82. That the said court erred in ruling out that portion of said letter as called for by plaintiffs in error, that portion of said letter being as follows:

"If there is any doubt of the dead man being my brothor, of course the sooner I know it the better; also for all concerned. I have no sympathy for the insurance companies you mention whatever, for they have no interest—at least, but their own—and, of course, no thought of justice in the matter if they really believe the man in question to have been murdered as supposed."

83. That the said court erred in sustaining the objection of the defendant in error to question propounded by plaintiffs in error to witness, Elizabeth Rieffenach, as follows:

Now you may state if you know how the other members of the family—your father, mother, and sisters—have regarded your brother Frederick Adolph—whether they have regarded him as living or dead—since they have received those pictures.

84. That the said court erred in sustaining objection of defendant in error to the question asked of said witness, Elizabeth Reiffenach, by plaintiffs in error as follows:

You may state how your father regarded this matter after he received the picture—whether he regarded him as dead or living.

85. That the said court erred in refusing to allow the said witness, Elizabeth Rieffenach, to state the contents of the letter received by her from her brother, Frederick Adolph Walters, which letter is dated March 4th or 5th or 3rd or 4th, 1879, and which is as follows:

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"DEAR SISTER AND ALL: I now in my usual style drop you a few lines to let you know that I expect to leave Wichita on or about March the 15th with a certain Mr. Hillmon, a sheep-trader, for Colorado or parts unknown to me. I expect to see the country now. News are of no interest to you, as you are not acquainted here. I will close with compliments to all inquiring friends. Love to you all.

I am truly your brother,

FRED. ADOLPH WALTERS."

86. That the said court erred in excluding the letter written by Frederick Adolph Walters to Miss Alvina Kasten, offered by said plaintiffs in error as a part of the testimony of said Alvina Kasten, a witness produced in their behalf, which letter is as follows:

WICHITA, *Mar.* 1*st*, 1879.

DEAREST ALVINA: Your kind and ever-welcome letter was received yesterday afternoon, about an hour before I left Emporia. I will stay here until the fore part of next week, and then will leave here to see a part of the country that I never expected to see when I left home, as I am going with a man by the name of Hillmon, who intends to start a sheep ranch, and as he promised me more wages than I could make at anything else I concluded to take it, for awhile at least, until I strike something better. There is so many folks in this country that have got the Leadville fever, and if I could not of got the situation that I have now I would have went there myself; but as it is at present I get to see the best portion of Kansas, Indian Territory, Colorado, and Mexico. The route that we intend to take would cost a man to travel from $150.00 to $200.00, but it will not cost me a cent; besides, I get good wages. I will drop you a letter occasionally until I get settled down; then I want you to answer it (you bet, honey)—don't it? So you can see that I will not get home for a few months yet, but cannot tell how soon I will get back. I am about as anxious to see you as you are to see me, but I do not want to get back there without a cent of money, for that is what I left for (you know).

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When I get back you will get to see me in about the way we parted (you bet). If any one asks you what I am doing tell them that you were not informed, for it is none of their business; and another thing: Don't ask me to write long letters, for I would without being told; so I will not waste any more paper on that subject (at present). I will have to come to a close before long, or I wil have to do as that other fellow—write two sheets and swindle the

p'master out of three cents, and you know I don't like to do that (pet).

Please give compliments to inquiring friends and all the love that you can embrace for yourself and nobody else. I will close for this time, love, to let you hear from me soon again.

Yours as ever, F. A. WALTER.

87. That the said court erred in excluding the evidence of Colonel Bradley, Judges Horton, Valentine, Johnson, and Humphrey to the following question:

State the reputation for professional integrity and standing of said W. J. Buchan.

88. That the said several judgments were given for the said Sallie E. Hillmon, defendant in error, when they ought to have
165 been given for the said Mutual Life Insurance Company of New York, The New York Life Insurance Company, and The Connecticut Mutual Life Insurance Company, plaintiffs in error, according to the law of the land.

The said Mutual Life Insurance Company of New York, The New York Life Insurance Company, and The Connecticut Mutual Life Insurance Company, plaintiffs in error, therefore pray that the said several judgments rendered against them respectively may be reversed and the said plaintiffs in error be restored to all things each has lost by reason thereof.

GEO. J. BARKER &
J. W. GREEN,
Att'ys for said Plaintiffs in Error.

Endorsed: Nos. 3147, 3148, 3149. The Mutual Life Insurance Company of New York *et al. vs.* Sallie E. Hillmon. Petition in error. Filed Aug. 10, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

166 In the United States Circuit Court, District of Kansas.

SALLIE E. HILLMON, Plaintiff,
v.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant. } Bond.

Know all men by these presents that I, John R. Mulvane, am held and firmly bound unto Sallie E. Hillmon in the full and just sum of twenty thousand dollars ($20,000.00), to be paid to the said Sallie E. Hillmon, her certain attorney, executor, administrator, or assign; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with my seal and dated this 11th day of August, 1888.

Whereas lately, at a term of the circuit court of the United States of America for the eighth circuit and district of Kansas, in a suit in said court depending between Sallie E. Hillmon, plaintiff, and The Mutual Life Insurance Company of New York, defendant, which

action was consolidated and tried with the cases of the said Sallie E. Hillmon against The Connecticut Mutual Life Insurance Company and The New York Life Insurance Company; and the said defendants having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, and a citation directed to Sallie E. Hillmon, citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said The Mutual Life Insurance Company of New York shall prosecute its writ of error to effect and answer all damages and costs if it fail to make good its plea, then the above obligation to be void;
167 else to remain in full force and effect.

JOHN R. MULVANE. [SEAL.]

Signed and sealed in presence of—
C. S. GLEED.

Approved.
C. G. FOSTER, *Judge.*

STATE OF ——, }
County of ——. }

—— ——, being duly sworn, deposes and says that he is the —— mentioned in the foregoing instrument, and that he duly executed the same; that he is worth the sum of $—— over and above all debts, exemptions, and liabilities.

—— ——.

Subscribed and sworn to before me this — day of ——, 1888.

—— ——.

Endorsed: No. 3147. Sallie E. Hillmon *vs.* The Mutual Life Insurance Company of New York. Bond. Filed Aug. 13, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

168 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Sallie E. Hillmon *vs.* The Mutual Life Insurance Company of New York, No. 3147, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the

same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

The Seal of the Circuit Court of the United States, District of Kansas, 1862.

Witness the Honorable Samuel F. Miller, senior associate justice of the Supreme Court of the United States of America, this 14th day of August, A. D. 1888.

A. S. THOMAS,
Clerk of the Circuit Court of the United States for the District of Kansas.

Allowed.
C. G. FOSTER, *Judge.*

[Endorsed:] No. 3147. The Mutual Life Insurance Company of New York, pl'ff in error, *vs.* Sallie E. Hillmon, def't in error. Writ of error. Filed Aug. 14, 1888. A. S. Thomas, clerk.

169 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Sallie E. Hillmon *vs.* The Mutual Life Insurance Company of New York, No. 3147; Sallie E. Hillmon *vs.* The New York Life Insurance Company, No. 3148, and Sallie E. Hillmon *vs.* The Connecticut Mutual Life Insurance Company, No. 3149—three certain actions consolidated for the purpose of trial—a manifest error hath happened, to the great damage of the said defendants, as by *its* complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

The Seal of the Circuit Court of the United States, District of Kansas, 1862.

Witness the Honorable Samuel F. Miller, senior associate justice of the Supreme Court of the United States of America, this 14th day of August, A. D. 1888.

A. S. THOMAS,
Clerk of the Circuit Court of the United States for the District of Kansas,
By FRANK J. THOMAS, *Deputy.*

Allowed.
C. G. FOSTER, *Judge.*

[Endorsed:] Nos. 3147, 3148, 3149. —— —— *vs.* —— ——. Writ of error. Filed August 14, 1888. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

170 The United States of America to Sallie E. Hillmon, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Kansas, wherein The Mutual Life Insurance Company of New York, The New York Life Insurance Company, and The Connecticut Mutual Life Insurance Company are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment entered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, this fifteenth day of August, in the year of our Lord one thousand eight hundred and eighty-eight.

C. G. FOSTER, *Judge.*

Attest:

{ The Seal of the Circuit Court of the United States, District of Kansas, 1862. }

A. S. THOMAS, *Clerk,*
By FRANK J. THOMAS, *Deputy.*

On this first day of Sept., in the year of our Lord one thousand eight hundred and eighty-eight, personally appeared Charles Currier, before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Sallie E. Hillmon, at Leavenworth, Leavenworth county, State and district of Kansas, Aug. 18. 1888.

CHARLES CURRIER.

Subscribed and sworn to before me this 1st day of Sept., A. D. 1888.

{ The Seal of the Circuit Court of the United States, District of Kansas, 1862. }

A. S. THOMAS, *Clerk,*
By FRANK J. THOMAS, *Deputy.*

Fees, $2.00; paid by pl'ffs in error.

[Endorsed:] Nos. 3147, 3148, 3149. Citation. Filed Sept. 1, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

171 The United States of America to Sallie E. Hillmon, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Kansas, wherein The Mutual Life Insurance Company of New York is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment entered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, this fifteenth day of August, in the year of our Lord one thousand eight hundred and eighty-eight.

C. G. FOSTER, *Judge.*

Attest:

{ The Seal of the Circuit Court of the United States, District of Kansas, 1862. }

A. S. THOMAS, *Clerk,*
By FRANK J. THOMAS, *Deputy.*

On this 1st day of Sept., in the year of our Lord one thousand eight hundred and eighty-eight, personally appeared Charles Currier before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Sallie E. Hillmon, at Leavenworth, Leavenworth county, State and district of Kansas, August 18, 1888.

CHARLES CURRIER.

Subscribed and sworn to before me this 1st day of Sept., A. D. 1888.

{ The Seal of the Circuit Court of the United States, District of Kansas, 1862. }

A. S. THOMAS, *Clerk,*
By FRANK J. THOMAS, *Deputy.*

Fees, $5.90; paid by pl'ff in error.

[Endorsed:] No. 3147. The Mutual Life Insurance Company of New York, pl'ff in error, *vs.* Sallie E. Hillmon, def't in error. Citation. Filed Sept. 1, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

172 UNITED STATES OF AMERICA, *District of Kansas,* } ss:

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and correct copy of all the record and proceedings

had in said court in the action of Sallie E. Hillmon *vs.* The Mutual Life Insurance Company of New York, No. 3147, in said court.

The Seal of the Circuit Court of the United States, District of Kansas, 1862.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Topeka, in said district of Kansas, this 12th day of September, A. D. 1888.

A. S. THOMAS, *Clerk.*

173 UNITED STATES OF AMERICA, *District of Kansas*, } *ss:*

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant. } Petition.

The said Sallie E. Hillmon, who is a citizen of the State of Kansas and the plaintiff in this the above-entitled action, complains of "The New York Life Insurance Company," the defendant herein; which said defendant is a citizen of the State of New York and is and was at the several times herein mentioned an existing corporation, with power and authority, among other things, to contract as such and to make and enter into such contracts and agreements as are hereinafter mentioned, and to make and execute the policies of insurance hereinafter mentioned; which said corporation was created and organized and exists in said State of New York and under and by virtue of the laws thereof.

And said plaintiff further avers that said defendant heretofore, to wit, on the thirtieth day of November, A. D. 1878, by Morris Franklin, its president, and Wm. H. Beers, its vice-president and actuary, its agents in that behalf, by it thereunto duly appointed and authorized, for certain considerations and premiums to it paid and to be paid, including sixty dollars and seventy cents then to it paid, made—that is, said defendant in the lifetime of said John W. Hillmon made—executed, and delivered to said plaintiff its certain written instrument of that date, commonly called a policy of insurance, of which said policy a copy is herewith filed, hereto attached, marked "Exhibit No. 1," and made part hereof.

174 And said plaintiff further avers that the John W. Hillmon in said policy mentioned was at the time of the execution thereof and until his death the husband of said plaintiff, who is his widow, and she, the said plaintiff, is mentioned and referred to as Salie E., wife of John W. Hillmon, in said policy, and said plaintiff then had and until the death of said John W. Hillmon continued to have a valuable and insurable interest in his life.

And said plaintiff further avers that said defendant did in and by said policy of insurance insure the life of said John W. Hillmon in the sum and to the amount of five thousand dollars for the term of his natural life, commencing on the thirtieth day of November, A.

D. 1878, at noon, for the sole use of said plaintiff, if living; and thereby—that is, in and by said policy of insurance—said defendant promised and agreed to and with said plaintiff, by the name and description of Salie E., wife of John W. Hillmon, to pay the amount of said insurance—that is, said sum of five thousand dollars—at its office, in the city of New York, to the said plaintiff for her sole use, if living, in conformity with the statute, and, if not living, to the children of said John W. Hillmon or their guardian for their use, or if there should be no such children surviving, then to the executors, administrators, or assigns of said John W. Hillmon, in sixty days after due notice and satisfactory proof of the death, during the continuance of said policy, of said John W. Hillmon, deducting therefrom all indebtedness to said defendant, together with any balance of the year's premium remaining unpaid, as shown by that policy, and said copy thereof is referred to for a more full description of the same.

And said plaintiff further avers that said John W. Hillmon afterward and heretofore, to wit, on the seventeenth day of March, A. D. 1879, died and his natural life and the term thereof ended during the continuance of said policy, and he did not die because of any
175 excepted or objectionable cause in said policy specified or referred to.

And said plaintiff avers that she, said plaintiff, has hitherto and that said John W. Hillmon in his lifetime respectively duly performed all and singular the conditions and requirements on their or either of their part and all the conditions in or by said policy of insurance made, shown, or referred to on their, said plaintiff and John W. Hillmon, or either of their part to be done or performed, including the giving of due notice and furnishing of satisfactory evidence by said plaintiff to said defendant of the death of said John W. Hillmon during the continuance of said policy and while the contract thereby shown was in full force and effect, all this more than sixty days before the commencement of this action.

And said plaintiff further avers that heretofore, to wit, on the 20th day of March, A. D. 1879, she duly notified said defendant of the death of said John W. Hillmon, and said defendant then had notice thereof and knew thereof, and that he had died during the continuance of said policy; and afterward and on the 22d day of May, A. D. 1879, said plaintiff gave and furnished said defendant proof of the death of said John W. Hillmon during the continuance of said policy and required and demanded of and from said defendant that it forthwith furnish and deliver to said plaintiff blanks and forms for other and further proof of the death of said John W. Hillmon unless said defendant elected to consider the proof so made formal proof of said death; and thereupon said defendant elected to consider and accept and duly accepted the proof so furnished as formal and sufficient proof of said death, and said defendant then neglected and refused and since neglects and refuses to furnish or deliver to said plaintiff such or any blanks or forms.

176 And said plaintiff further avers that afterwards, to wit, on or about the 19th day of August, A. D. 1879, said plaintiff furnished

further proof of said death to said company sufficient to be satisfactory to said company and which was and is satisfactory to said defendant; and said defendant, though duly requested and having notice of said death more than sixty days before the commencement of this action, has hitherto neglected and refused and still neglects and refuses to furnish, deliver, or supply said plaintiff with or permit her to have defendant's blanks for proof of death, and said defendant more than sixty days before the commencement of this action waived any other or further proof of said death and any other or further statement of any person or of any matter other or further than such as already made and furnished and delivered to said defendant.

Yet said defendant, though often requested, has not as yet ever paid to said plaintiff the sum of money above mentioned nor any part thereof nor any interest thereon, but, on the contrary, to pay the *sum* or any part thereof said defendant has hitherto and still does wholly neglect and refuse.

Second. And, for a second and further cause of action in this behalf, said plaintiff further avers that said defendant heretofore, to wit, on the tenth day of December, A. D. 1878, by Morris Franklin, its president, and Wm. H. Beers, its vice-president and actuary, its agents in that behalf by it thereunto duly appointed and authorized, for certain considerations and premiums to it paid and to be paid, including sixty dollars and seventy cents then to it paid, made—that is, said defendant in the lifetime of said John W. Hillmon made—executed, and delivered to said plaintiff its certain other written instrument of that date, commonly called a policy of insurance,
177 of which said policy a copy is herewith filed, hereto attached, marked "Exhibit No. 2," and made part hereof.

And said plaintiff further avers that the John W. Hillmon in said policy mentioned was at the time of the execution thereof and until his death the husband of said plaintiff, who is his widow, and she, the said plaintiff, is mentioned and referred to as Sallie E., wife of John W. Hillmon, in said policy, and said plaintiff then had, and until the death of said John W. Hillmon continued to have, a valuable and insurable interest in his life.

And said plaintiff further avers that said defendant did in and by said policy of insurance insure the life of said John W. Hillmon in the sum and to the amount of five thousand dollars for the term of his natural life, commencing on the tenth day of December, A. D. 1878, at noon, for the sole use of said plaintiff, if living; and thereby—that is, in and by said policy of insurance—said defendant promised and agreed to and with said plaintiff, by the name and description of Sallie E., wife of John W. Hillmon, to pay the amount of said insurance—that is, said sum of five thousand dollars—at its office, in the city of New York, to the said plaintiff for her sole use, if living, in conformity with the statute, and, if not living, to the children of said John W. Hillmon or their guardian for their use, or if there should be no such children surviving, then to the executors, administrators, or assigns of said John W. Hillmon, in sixty days after due notice and satisfactory proof of the death, during the continuance of said policy, of said John W. Hillmon, deducting

therefrom all indebtedness to said defendant, together with any balance of the year's premium remaining unpaid, as shown by that policy and said copy thereof is referred to for a more full description of the same.

And said plaintiff further avers that said John W. Hillmon afterward and heretofore, to wit, on the seventeenth day of March,
178 A. D. 1879, died and his natural life and the term thereof ended during the continuance of said policy, and he did not die because of any excepted or objectionable cause in said policy specified or referred to.

And said plaintiff avers that she, said plaintiff, has hitherto and said John W. Hillmon in his lifetime respectively duly performed all and singular the conditions and requirements on their or either of their parts and all the conditions in or by said policy of insurance made, shown, or referred to on their, said plaintiff's and John W. Hillmon's, or either of their parts to be done or performed, including the giving of due notice and furnishing of satisfactory evidence by said plaintiff to said defendant of the death of said John W. Hillmon during the continuance of said policy and while the contract thereby shown was in full force and effect, and all this more than sixty days before the commencement of this action.

And said plaintiff further avers that heretofore, to wit, on the 20th day of March, A. D. 1879, she duly notified said defendant of the death of said John W. Hillmon, and said defendant then had notice and knew thereof, and that he had died during the continuance of said policy.

And afterward and on or about the 21st day of May, A. D. 1879, said plaintiff gave and furnished said defendant proof of the death of said John W. Hillmon during the continuance of said policy, and required and demanded of and from said defendant that it forthwith furnish plaintiff blanks and forms for other and further proof of the death of said John W. Hillmon unless said defendant elected to consider the proof so made formal proof of said death.

And thereupon said defendant elected to consider and accept and duly accepted the proof so furnished as formal and sufficient proof
179 of said death, and said defendant then neglected and refused and still neglects and refuses to furnish or deliver to said plaintiff such or any blanks or forms.

And said plaintiff further avers that afterwards, to wit, on or about the 19th day of August, A. D. 1879, said plaintiff furnished further proof of said death to said company sufficient to be satisfactory to said company and which was and is satisfactory to said defendant; and said defendant, though duly requested and having notice of said death more than sixty days before the commencement of this action, has hitherto neglected and refused and still neglects and refuses to furnish, deliver, or supply said plaintiff with or permit her to have defendant's blanks for proofs of death, and said defendant, more than sixty days before the commencement of this action, waived any other or further proof of said death and any other or further statement of any person or of any matter other or further than such as already made and furnished and delivered to said defendant.

Yet said defendant, though often requested, has not as yet ever paid to said plaintiff the several sums of money above mentioned, nor any nor either of them, nor any part thereof, nor any interest thereon, nor either of the aforesaid sums of $5,000.00, nor any part thereof, nor any interest thereon; but, on the contrary, to pay the same or any part thereof said defendant has hitherto and still does wholly neglect and refuse.

Wherefore said plaintiff prays and demands judgment against said defendant in the sum of ten thousand dollars, with interest thereon, at the rate of seven per cent. per annum, from the 20th day of July, 1879, and for costs of suit, &c.

L. B. WHEAT,
R. J. BORGHOLTHAUS,
SAM'L A. RIGGS &
JOHN HUTCHINGS,
Att'ys for Plaintiff.

180 *Precipe.*

The clerk of the above-named court will please issue a summons for the defendant in the above petition named, directed to the superintendent of ins. of the State of Kansas, returnable according to law.

Action brought for the recovery of money only. Am't claimed, ten thousand dollars, with interest thereon, at the rate of seven per cent. per annum, from the 20th day of July, A. D. 1879, & costs.

L. B. WHEAT,
R. J. BORGHALTHAUS,
SAM'L A. RIGGS &
JOHN HUTCHINGS,
Att'ys for Plaintiff.

"EXHIBIT No. 1."

Tontine Investment Policy.

Number 134,418. Amount, $5,000.

Annual premium, $121.40, payable, $60.70, Nov. 30th, May 30th.

The New York Life Insurance Company by this policy of insurance, in consideration of the statements and representations submitted to its officers at the home office, in the city of New York, and contained in the written application for this policy and in the declaration thereto subjoined (all of which statements and representations have been and are hereby warranted by the applicant to be true and are by the parties hereto referred to and made a part of this contract), upon the faith of which statements and representations this policy is issued, and of the sum of sixty dollars and seventy cents to them in hand paid by the assured under this policy, to wit, Salie E., wife of John W. Hillmon, and of the annual premium of one hundred and twenty-one dollars and forty cents, to be paid in like manner and sums as per margin in every year during the continuance of this policy, doth insure the life of John
181 W. Hillmon, stock dealer (hereinafter called the insured), of North Lawrence, in the county of Douglas, State of Kansas,

in the amount of five thousand dollars, for the term of his natural life, commencing on the thirtieth day of November, 1878, at noon.

And the said company doth hereby promise and agree to pay the amount of the said insurance at its office, in the city of New York, to the said assured for the sole use, if living, in conformity with the statute, and, if not living, to the children of said person whose life is hereby insured or their guardian for their use, or if there be no such children surviving, then to the executors, administrators, or assigns of said person whose life is hereby insured, in sixty days after due notice and satisfactory proof of the death during the continuance of this policy of the said person whose life is hereby insured as above, deducting therefrom all indebtedness to the company, together with any balance of the year's premium remaining unpaid.

This policy is issued and accepted by the assured upon the following express conditions and agreements:

1st. If the person whose life is hereby insured shall travel or reside beyond the settled limits or the protection of the Government of the United States (excepting in the settled limits of the Dominion of Canada, Prince Edward's Island, or Newfoundland) or, between the first of July and the first of November, south of a line beginning at the point of intersection of the northerly boundary of North Carolina with the Atlantic coast; thence running westerly along said northerly boundary to a point one hundred miles from the coast; thence in a southwesterly direction continuing one hundred miles from said coast to the thirty-fourth parallel of latitude; thence westerly along said parallel to the westerly border of Alabama, (excepting the city of Atlanta and an area within a radius of fifty miles around it); thence northerly along the westerly
182 border of Alabama and along the Tennessee river to the northerly boundary of Tennessee and Arkansas, extended to the ninety-seventh degree of west longitude; thence southerly to the thirty-second parallel of north latitude; thence westerly along the said parallel to the Pacific Ocean, or shall enter upon a voyage upon the high seas (except as hereinafter specified), or shall be personally engaged in blasting, mining, submarine operations, or the production of highly inflammable or explosive substances; or in working or managing a steam-engine in any capacity; or as mariner, engineer, fireman, conductor, express messenger, or laborer in any capacity upon service on any sea, sound, inlet, river, lake, or railroad; or shall enter any military or naval service whatsoever (the militia when not in actual service excepted) without
Age, 31. the consent of this company in each or either of the foregoing cases previously given in writing; or if he shall die in or in consequence of a duel, or of the violation of the laws of any nation, State, or province; or if his death shall be caused by the use of intoxicating drinks or opinion, or if any of the statements or representations hereinabove in the first paragraph of this policy referred to shall be found in any respect untrue, then and in every such case this policy shall be null and void.

2nd. If the premiums as above stipulated shall not be paid on or before the days above mentioned for the payment thereof (allowance

being made for the month of grace hereinafter mentioned) at the office of this company in the city of New York (unless otherwise expressly agreed in writing) or to agents when they produce receipts signed by the president, vice-president, or actuary, then and in every such case this company shall not be liable for the payment of the sum assured or any part thereof and this policy shall cease
183 and determine. While the said company or its agents may at their option give notice of the time of payment of said premiums, the giving of such notice shall be deemed an act of courtesy only, and shall not be deemed to establish a custom in relation thereto, or to be obligatory upon said company or its agents.

3rd. In every case where this policy shall cease and determine or become or be null and void all payments thereon shall be forfeited to this company, and no action or right of action shall remain to or be maintained against this company by the assured or by any other person by virtue of this policy or of anything connected therewith.

4th. Receipts for premiums are not valid unless signed by the president, vice-president, or actuary.

5th. Agents of the company are not authorized to make, alter, or discharge contracts or waive forfeitures.

6th. Inasmuch as only the officers at the home office of the company, in the city of New York, have authority to determine whether or not a policy shall issue on any application, and as they act on the written statements and representations hereinabove referred to, it is expressly understood and agreed that no statements, representations, or information made or given by or to the person soliciting or taking the application for this policy or to any other person shall be binding on the company or in any manner affect its rights unless such statements, representations, or information be reduced to writing and presented to the officers of the company at the home office in the application referred to.

7th. The person whose life is hereby insured has permission to pass as passenger, by direct route, in first-class vessels, as follows: 1st, to and from Europe (travel and residence wherein is
184 hereby permitted); 2nd, to and from California and along the coasts of Nova Scotia, New Brunswick, and the United States, between Cape Canso and the Rio Grande (provided no port is entered in which residence at the time of such entrance is prohibited); 3d, between ports on the East Pacific coast north of 32° of north latitude; 4th, between ports on the East Pacific coast north of 32° of north latitude, and ports in the Sandwich Islands, China, and Japan.

And, further, this policy is issued and accepted by the assured on the following special agreements and conditions relative to policies on the tontine investment policy plan:

Examined: W. M. A.

1st. That this policy is issued on the tontine investment policy plan.

2nd. That the tontine-dividend period for this policy shall be completed on the thirtieth day of November, in the year eighteen hundred and ninety-eight.

3d. That no dividend shall be allowed or paid upon this policy

unless the person whose life is hereby insured shall survive until the completion of its tontine-dividend period and unless this policy shall then be in force.

4th. That all surplus or profits derived from such policies on the tontine investment policy plan as shall cease to be in force before the completion of their respective tontine-dividend periods shall be apportioned equitably among such policies of the same class as shall complete their tontine-dividend periods in the same year.

5th. That after the completion of the tontine-dividend period, on the thirtieth day of November, 1898, provided this policy shall not have been previously terminated by lapse or death, the accumulations apportioned to this policy shall secure to the assured
185 one of the following benefits: First, to apply the accumulated dividend to the purchase of an annuity during the life of the insured, to be applied to the reduction of subsequent premiums on this policy; and in case the amount accruing in any year from the annuity, together with dividends that may thereafter be declared on this policy, shall exceed the amount of premium due thereon the excess shall be paid in cash to said insured or assigns; second, to continue the assurance for the original amount and withdraw the accumulated dividend upon this policy in cash, payable to said insured or assigns; third, to withdraw the entire equity (*i. e.*, the accumulations that belong to this policy) in cash; fourth, to convert the entire equity into *this* its equivalent in a paid-up policy without participation in profits: Provided, that should the amount of the paid-up policy exceed the original amount of the insurance, as a condition precedent to its issue a satisfactory certificate of good health from an examiner of the company and subject to its approval shall be furnished, and provided that this policy is duly surrendered within ninety days from the termination of the tontine-dividend period; fifth, the conversion of the entire equity into an annuity, to continue during the life of said insured. These benefits are at the option of the assured, but it is understood and agreed that not less than three months prior to the termination of the tontine period the assured shall notify the company in writing which benefit is selected; and if no such notification is received, then and in that case the accumulated profits shall be converted into an annuity, to be applied to the reduction of such remaining premiums under the conditions stipulated in the "first benefit" named above.

6th. That previous to the completion of its tontine-dividend period this policy shall have no surrender value in cash or in a paid-up policy.

186 7th. That in the payment of premiums upon this policy a grace shall be allowed of one month: Provided, that in all cases when this grace is availed of a fine at the rate of ten per cent. per annum shall be paid to the company for the time deferred.

This policy is not assignable.

In witness whereof the said New York Life Insurance Company has by its president and actuary signed and delivered this contract

this thirtieth day of November, one thousand eight hundred and seventy-eight.

MORRIS FRANKLIN, *President.*

WM. H. BEERS,
Vice-Pres. & Actuary.

[On the margin:] Wife's policy. Ordinary life. Tontine investment policy. Edition — January, 1874. U.

"EXHIBIT No. 2."

Tontine Assessment Policy.

Number 134,548. Amount, $5,000.

Annual premium, $121.40, payable, $60.70, Dec. 10th, June 10th.

The New York Life Insurance Company by this policy of insurance, in consideration of the statements and representations submitted to its officers at the home office, in the city of New York, and contained in the written application for this policy and in the declaration thereto subjoined (all of which statements and representations have been and are hereby warranted by the applicant to be true and are by the parties hereto referred to and made a part of this contract), upon the faith of which statements and representations this policy is issued, and of the sum of sixty dollars and seventy cents to them in hand paid by the assured under this policy, to wit, Sallie E., wife of John W. Hillmon, and of the annual premium of one hundred and twenty-one dollars and forty cents, to be paid in like manner and sums as per margin in every year during the continuance of this policy, doth insure the life of John
187 W. Hillmon, stock dealer (hereinafter called the insured), of Lawrence, in the county of Douglas, State of Kansas, in the amount of five thousand dollars, for the term of his natural life, commencing on the tenth day of December, 1878, at noon.

And the said company doth hereby promise and agree to pay the amount of the said insurance at its office, in the city of New York, to the said assured for her sole use, if living, in conformity with the statute, and, if not living, to the children of said person whose life is hereby insured or their guardian for their use, or if there be no such children surviving, then to the executors, administrators, or assigns of said person whose life is hereby insured, in sixty days after due notice and satisfactory proof of the death during the continuance of this policy of the said person whose life is hereby insured as above, deducting therefrom all indebtedness to the company, together with any balance of the year's premium remaining unpaid.

This policy is issued and accepted by the assured upon the following express conditions and agreements:

1st. If the person whose life is hereby insured shall travel or reside beyond the settled limits or the protection of the Government of the United States (excepting in the settled limits of the Dominion of Canada, Prince Edward's Island, or Newfoundland) or, between

the first of July and the first of November, south of a line beginning at the point of intersection of the northerly boundary of North Carolina with the Atlantic coast; thence running westerly along the said northerly-boundary to a point one hundred miles from the coast; thence in a southwesterly direction continuing one hundred miles from said coast to the thirty-fourth parallel of latitude; thence westerly along said parallel to the westerly border of Alabama (excepting the city of Atlanta and an area within a radius of fifty miles around it); thence northerly along the westerly
188 border of Alabama and along the Tennessee river to the northerly boundary of Tennessee; thence westerly along the northerly boundary of Tennessee and Arkansas, extended to the ninety-seventh degree of west longitude; thence southerly to the thirty-second parallel of north latitude; thence westerly along the said parallel to the Pacific Ocean, or shall enter upon a voyage upon the high seas (except as hereinafter specified), or shall be personally engaged in blasting, mining, submarine operations, or the production of highly inflammable or explosive substances; or in working or managing a steam-engine in any capacity; or as mariner, engineer, fireman, conductor, express messenger, or laborer in any capacity upon service on any sea, sound, inlet, river, lake, or railroad; or shall enter any military or naval service whatsoever (the militia when not in actual service excepted) without
Age, 31. the consent of this company in each or either of the foregoing cases previously given in writing; or if he shall die in or in consequence of a duel, or of the violation of the laws of any nation, State, or province; or if his death shall be caused by the use of intoxicating drinks or opium, or if any of the statements or representations hereinabove in the first paragraph of this policy referred to shall be found in any respect untrue, then in every such case this policy shall be null and void.

2d. If the premiums as above stipulated shall not be paid on or before the days above mentioned for the payment thereof (allowance being made for the month of grace hereinafter mentioned) at the office of this company in the city of New York (unless otherwise expressly agreed in writing) or to agents when they produce receipts signed by the president, vice-president, or actuary, then and in every such case this company shall not be liable for the payment of the sum assured or any part thereof and this policy shall cease
189 and determine. While the said company or its agents may at their option give notice of the time of payment of said premiums, the giving of such notice shall be deemed an act of courtesy only, and shall not be deemed to establish a custom in relation thereto or to be obligatory upon said company or its agents.

3d. In every case where this policy shall cease and determine or become or be null and void all payments thereon shall be forfeited to this company, and no action or right of action shall remain to or be maintained against this company by the assured or by any other person by virtue of this policy or of anything connected therewith.

4th. Receipts for premiums are not valid unless signed by the president, vice-president, or actuary.

5th. Agents of the company are not authorized to make, alter, or discharge contracts or waive forfeitures.

6th. Inasmuch as only the officers at the home office of the company, in the city of New York, have authority to determine whether or not a policy shall issue on any application, and as they act on the written statements and representations hereinabove referred to, it is expressly understood and agreed that no statements, representations, or information made or given by or to the person soliciting or taking the application for this policy or to any other person shall be binding on the company or in any manner affect its rights unless such statements, representations, or information be reduced to writing and presented to the officers of the company at the home office in the application referred to.

7th. The person whose life is hereby insured has permission to pass as passenger, by direct route, in first-class vessels, as follows:

1st, to and from Europe (travel and residence wherein is
190 hereby permitted); 2d, to and from California and along the coasts of Nova Scotia, New Brunswick, and the United States, between Cape Canso and the Rio Grande (provided no port is entered in which residence at the time of such entrance is prohibited); 3rd, between ports on the East Pacific coast north of 32° of north latitude; 4th, between ports on the East Pacific coast north of 32° of north latitude, and ports in the Sandwich Islands, China, and Japan.

And, further, this policy is issued and accepted by the assured on the following special agreements and conditions relative to policies on the tontine investment policy plan:

Examined: W. M. A.

1st. That this policy is issued on the tontine investment policy plan.

2d. That the tontine-dividend period for this policy shall be completed on the tenth day of December, in the year eighteen hundred and ninety-eight.

3d. That no dividend shall be allowed or paid upon this policy unless the person whose life is hereby insured shall survive until the completion of its tontine-dividend period and unless this policy shall then be in force.

4th. That all surplus or profits derived from such policies on the tontine investment policy plan as shall cease to be in force before the completion of their respective tontine-dividend periods shall be apportioned equitably among such policies of the same class as shall complete their tontine-dividend periods in the same year.

5th. That after the completion of the tontine-dividend period, on the tenth day of December, 1898, provided this policy shall not have been previously terminated by lapse or death, the accumulations apportionate to this policy shall secure to the assured
191 one of the following benefits: First, to apply the accumulated dividend to the purchase of an annuity during the life of the insured, to be applied to the reduction of subsequent premiums on this policy; and in case the amount accruing in any year from the annuity, together with dividends that may thereafter be declared on this policy, shall exceed the amount of premium due thereon the

excess shall be paid in cash to said insured or assigns; second, to continue the assurance for the original amount and withdraw the accumulated dividend upon this policy in cash, payable to said insured or assigns; third, to withdraw the entire equity (*i. e.*, the accumulations that belong to this policy) in cash; fourth, to convert the entire equity into its equivalent in a paid-up policy without participation in profits: Provided, that should the amount of the paid-up policy exceed the original amount of the insurance, as a condition precedent to its issue a satisfactory certificate of good health from an examiner of the company and subject to its approval shall be furnished, and provided that this policy is duly surrendered within ninety days from the termination of the tontine-dividend period; fifth, the conversion of the entire equity into an annuity, to continue during the life of said insured. These benefits are at the option of the assured, but it is understood and agreed that not less than three months prior to the termination of the tontine period the assured shall notify the company in writing which benefit is selected; and if no such notification is received, then and in that case the accumulated profits shall be converted into an annuity, to be applied to the reduction of such remaining premiums under the conditions stipulated in the "first benefit" named above.

6th. That previous to the completion of its tontine-dividend period this policy shall have no surrender value in cash or in a paid-up policy.

192 7th. That in the payment of premiums upon this policy a grace shall be allowed of one month: Provided, that in all cases when this grace is availed of a fine at the rate of ten per cent. per annum shall be paid to the company for the time deferred.

This policy is not assignable.

In witness whereof the said New York Life Insurance Company has by its president and actuary signed and delivered this contract this tenth day of December, one thousand eight hundred and seventy-eight.

MORRIS FRANKLIN, *President.*

WM. H. BEERS,
Vice-Pres. & Actuary.

[On the margin:] Wife's policy. Ordinary life. Tontine investment policy. Edition — January, 1874. U.

Endorsed: No. 3148. Circuit court of the United States, district of Kansas. Sallie E. Hillmon *vs.* The New York Life Insurance Company. Petition. L. B. Wheat, R. J. Borghalthaus, Samuel A. Riggs, & John Hutchings, att'ys for plaintiff. Filed July 13, 1880. A. S. Thomas, clerk.

193 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY, NEW YORK.

I enter myself security for costs in said case and promise to pay all costs which may accrue to the opposite party in this action or to

any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by *him* I hereby agree and stipulate that execution may issue against my property for any costs taxed against her.

Dated 13th day of July, 1880.

LEMUEL EVANS.

Endorsed: No. 3148. Sallie E. Hillmon *vs.* The New York Life Ins. Co. Security for costs. Filed July 13, 1880. A. S. Thomas, clerk. Approved July 13, 1880. A. S. Thomas, clerk.

194 STATE OF KANSAS, INSURANCE DEPARTMENT.

I, Orrin T. Welch, superintendent of insurance for the State of Kansas, do hereby certify that I received the annexed summons in the case of Sallie E. Hillmon *versus* The New York Life Insurance Company, issued by the clerk of the circuit court of the United States, district of Kansas, dated the 13th day of July, A. D. 1880, on the 13th day of July, A. D. 1880, at three o'clock p. m., and that on the 14th day of July, A. D. 1880, I forwarded a duly certified copy of the same by depositing it in the United States mail, postage paid, addressed as follows: Wm. H. Beers, acting sec'y of the New York Life Ins. Co., New York city, N. Y. Said New York Life Insurance Company has no general agent residing in this State.

In witness whereof I have hereunto set my hand and [SEAL.] affixed my official seal, at the city of Topeka, this 14th day of July, A. D. 1880.

ORRIN T. WELCH,
Superintendent.

Fees:

Making copy for sec't'y of Co.	25
" certificate on same	25
Certifying the same	1 00
Making certificate of return	25
Certifying the same	1 00
Total	$2 75

195 Circuit Court of the United States of America, District of Kansas, *ss:*

The United States of America to Orrin T. Welch, superintendent of insurance of the State of Kansas, Greeting:

You are hereby commanded to notify the New York Life Insurance Company that it has been sued by Sallie E. Hillmon in the circuit court of the United States for the district of Kansas, and that unless it answer by the twenty-second day of August, A. D. 1880, the petition of the said Sallie E. Hillmon against it filed in the clerk's office of the said court such petition will be taken as true and judgment rendered accordingly. You will make due return of this writ according to law.

Witness the Hon. Morrison R. Waite, Chief Justice of the Su-

preme Court of the United States of America, at Topeka, in said district, this 13th day of July, A. D. 1880.

[SEAL.] A. S. THOMAS, *Clerk.*

[Endorsed:] No. 3148. Circuit court of the United States, district of Kansas. Sallie E. Hillmon *vs.* The New York Life Insurance Company. Summons. Issued July 13, 1880, returnable according to law. Filed July 14, 1880. A. S. Thomas, clerk. L. B. Wheat, R. J. Borghalthaus, Samuel A. Riggs & John Hutchings, attorneys for plaintiff.

Suit brought for the recovery of money. Amount claimed, $10,000, with interest from the 20 day of July, A. D. 1879, at the rate of 7 per cent. per annum, & costs.

L. B. WHEAT,
R. J. BORGHALTHAUS,
SAMUEL A. RIGGS &
JOHN HUTCHINGS,
Attorneys for Plaintiff.

U. S. Marshal's Return.

DISTRICT OF KANSAS, *ss:*

Received the within writ —— the —, 188–.

—— ——.

196 UNITED STATES OF AMERICA, }
District of Kansas. }

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY OF NEW YORK, Defendant.

And now, at this day, comes the New York Life Insurance Company of New York and moves the court here to grant an order requiring the said plaintiff, Sallie E. Hillmon, to give additional security for costs in said action for the following reasons, to wit:

1st. That the security, Lemuel Evans, is insolvent.

2nd. That said Lemuel Evans is insufficient financially as a security for costs in said action.

J. W. GREEN AND
GEO. J. BARKER,
Att'ys for Def't.

Endorsed: No. 3148. Sallie E. Hillmon *vs.* The New York Life Insurance Company. Motion requiring additional security for costs. Filed Aug. 21, 1880. A. S. Thomas, clerk. J. W. Green and Geo. J. Barker, for def't.

197 UNITED STATES OF AMERICA, *District of Kansas.*

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, NEW YORK, Defendant.

And now, at this day, comes the New York Life Insurance Company of New York and moves the court here to grant an order requiring said plaintiff, Sallie E. Hillmon, to make her petition filed herein more definite and certain, in this, to wit:

That said plaintiff be required to state specifically of what particular disease, injury, or cause the said John W. Hillmon died.

J. W. GREEN AND
GEO. J. BARKER,
Att'ys for Def't.

Endorsed: No. 3148. Sallie E. Hillmon *vs.* The New York Life Insurance Company. Motion to make petition more definite and certain. Filed Aug. 21, 1880. A. S. Thomas, clerk. J. W. Green and Geo. J. Barker, att'ys for def't.

198 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 22nd day of November, A. D. 1880, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

FRIDAY, *December* 3, 1880.

Now come the parties hereto, by their attorneys, and thereupon the defendant's motions for additional security for costs and to make petition more definite and certain came on to be heard and were argued by counsel; on consideration whereof it is ordered by the court that the sureties herein do justify within ten days from this date, and the motion to make petition more definite and certain is overruled; to which ruling defendant excepts. Leave is given defendant to file answer in thirty days, and action continued to the next term of this court.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SATURDAY, *December* 18, 1880.

The defendant's motion for additional security for costs came on

to be heard and was argued by counsel; on consideration whereof it is ordered by the court that the same be, and is hereby, overruled.

199 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant. } Answer.

The said defendant, The New York Life Insurance Company, for its first defense, represents and shows to the court that it denies all and singular the allegations and averments contained and set forth in said plaintiff's petition filed herein.

For a further and second defense said defendant shows that on or about the — day of ——, A. D. 1879, a dispute, difference, and controversy subsisted between said plaintiff and defendant, in this, to wit: Said plaintiff claimed that one John W. Hillmon, the person mentioned in the insurance policy in said plaintiff's petition set forth, died near Medicine Lodge, in Barbour county, in the State of Kansas, on or about the — day of ——, A. D. 1879, from a gunshot wound received from a gun then and there accidentally discharged by one John S. Brown, and that by reason thereof a cause of action accrued to her, said plaintiff, while said defendant denied that said Hillmon was dead, and that any cause of action had accrued to said plaintiff.

That for the purpose of ending said dispute and controversy said plaintiff, for a good and valuable consideration to her by said defendant paid, made, executed, and delivered to said defendant her certain release and satisfaction in writing, of which the following is a true copy:

LEAVENWORTH, KANS., *Sept.* 15, 1879.

In consideration of one dollar to me in hand paid, the receipt whereof is hereby acknowledged, I hereby acknowledge satisfaction in full and release and surrender all claims under and by rea-
200 son of policy No. 134,418, dated November 30th, 1878, for five thousand dollars, issued by the New York Life Insurance Company on the life of my husband, John W. Hillman, and hereby enter satisfaction in full and order the dismissal of any and all suits or proceedings commenced or that may hereafter be begun by any person or persons in my name and behalf for the collection of the same.

(Signed) S. E. HILLMAN.

Attest:
W. J. BUCHAN.
JOHN H. BROWN.

Wherefore the said defendant asks judgment against the said plaintiff for costs of this suit.

J. W. GREEN AND
GEO. J. BARKER,
Att'ys for Def't.

Endorsed: No. 3148. Sallie E. Hillman, pl'ff, *vs.* The New York Life Insurance Company. Answer. Filed Jan. 3, 1881. A. S. Thomas, clerk. J. W. Green and Geo. J. Barker, att'ys for def't.

UNITED STATES OF AMERICA,
State and District of Kansas, } *sct:*

In the United States Circuit Court.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant. } Reply.

The plaintiff, for her reply to the answer of the defendant herein filed, says:

First. That she denies each and every allegation in said answer contained.

Second. That the so-called release and satisfaction in writing in the second defense in defendant's answer set out was obtained
201 from this plaintiff without any consideration whatever and was and is inoperative and void.

Third. That at the county of Barbour, in the State of Kansas, on or about the 17th day of March, A. D. 1879, John W. Hillmon, the husband of this plaintiff and the person whose life was insured in and by the policy set out in plaintiff's petition, died from a gunshot wound produced by the accidental discharge of a gun in the hands of one John H. Brown; that on or about the 15th day of September, A. D. 1879, the date of the so-called release and satisfaction set out in defendant's second defense, the said defendant, by its duly authorized agents and other persons by the procurement of said defendant, falsely and fraudulently represented to this plaintiff that her husband, the said John W. Hillmon, was then still living and the said John H. Brown would so testify on the trial of any action brought to recover the amount due under said policy, and that he would testify that the body which had been produced and identified by her as the body of her said husband was not the body of the said John W. Hillmon, but was the body of another and different person, and, to induce the plaintiff to believe the said false and fraudulent representations, procured the said John H. Brown, upon whose testimony the plaintiff was relying to establish the fact of the death of her said husband and her right to recover the amount of said policy, to make a statement in writing to the effect that the said John W. Hillmon was still living as aforesaid, and that the body which had been produced and identified by her as the body of her said husband was not the body of the said John W. Hillmon, but was the body of another and different person; that the said representations, at the time the same were made and at the time the so-called release and satisfaction was signed by this plaintiff, were false
202 and were known to be false by said defendant, its agents, and the persons making the same, and the same were made for the purpose and with the intention of deceiving and defrauding this plaintiff of her right to recover the amount due her on and under the said policy.

That this plaintiff, by means of said false and fraudulent representations and the said statement of said John H. Brown, and being thereby led and influenced to believe that the said Brown would testify as the defendant and its said agents had represented, contrary to the truth and the facts in the premises, was induced by said defendant and its agents and other persons acting in its behalf to sign and deliver without consideration the so-called release and satisfaction set out in defendant's second defense.

L. B. WHEAT,
SAM'L A. RIGGS,
R. J. BORGHALTHAUS,
JOHN HUTCHINGS,
Att'ys for Plaintiff.

The time to file the within and foregoing reply is extended to March 21st, A. D. 1881.

GEO. J. BARKER,
J. W. GREEN,
Att'ys for Defendant.

Endorsed: No. 3148. Circuit court of the United States, district of Kansas. Sallie E. Hillmon *vs.* The New York Life Insurance Company. Reply. L. B. Wheat, S. A. Riggs, R. J. Borghalthaus & John Hutchings, att'ys for pl'ff. Filed Mar. 21, 1881. A. S. Thomas, clerk.

203 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Pl'ff,
vs.
THE NEW YORK LIFE INS. CO., Def't.

To said plaintiff & her attorneys of record:

You are hereby notified that on Tuesday, the 7th day of June, A. D. 188–, at ten o'clock a. m., or as soon thereafter as counsel can be heard, the defendant will apply to said court for permission to file an amended answer in said action.

Lawrence, June 6th, 1881.

J. W. GREEN,
GEO. J. BARKER,
Att'ys for Def't.

Service accepted on the day above named.

———.

STATE OF KANSAS,
County of Leavenworth.

Geo. J. Barker, being duly sworn, says that he is one of the attorneys of record for the defendant in the within-mentioned action, and that he served the within notice upon the plaintiff therein by delivering to John Hutchings, Esq., one of her attorneys of record, a true copy thereof on the 6th day June, A. D. 1881, at the city of Lawrence, Kansas.

GEO. J. BARKER.

Subscribed & sworn to before me this 7th day of June, A. D. 1881.
[SEAL.] A. S. THOMAS, *Clerk.*

Endorsed: No. 3148. Sallie E. Hillmon *vs.* The New York Life Ins. Co. Notice of motion. Filed June 7, 1881. A. S. Thomas, clerk. J. W. Green, Geo. J. Barker, att'ys for def't.

204 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 6th day of June, A. D. 1881, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

TUESDAY, *June* 7, 1881.

Now comes the defendant, by J. W. Green and Geo. J. Barker, its attorneys, and on its motion it is ordered by the court that leave be, and is hereby, given it to file amended answer.

205 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant. } Amended Answer.

1st. The defendant, The New York Life Insurance Company, for its first defense represents and shows to the court that it denies all and singular the allegations and averments contained and set forth in said plaintiff's petition filed herein.

2nd. Said defendant, further answering, says that on and before the 30th day of November, A. D. 1878, one John W. Hillmon, John H. Brown, and Levi Baldwin and divers other persons, to the defendant unknown, unlawfully and fraudulently confederating, conspiring, contriving, and intending to cheat and defraud this defendant, procured a large amount of insurance to be taken on the life of the said John W. Hillmon, to wit, in the New York Life Insurance Company, by its policy numbered 134,418 and dated November 30th, 1878, for the sum of ten thousand dollars; in the Mutual Life Insurance Company of New York, by its policy numbered 195,132 and dated December 10th, 1878, for the sum of ten thousand dollars, and in the Connecticut Mutual Life Insurance Company, by its policy numbered 153,614 and dated March 4th, 1881, for the sum of ten thousand dollars.

That thereafter and in pursuance of said conspiracy and with said intent said Hillman, Brown, and Baldwin did falsely and fraudulently pretend and represent unto this defendant and others that said Hillman was dead, and did, in or about the months of March

& April, A. D. 1879, and thereafter, for the purpose of securing the payment of said policies and obtaining the money thereon,
206 falsely and fraudulently claim, pretend, and represent unto this defendant that the said John W. Hillman was dead, and that a certain dead body which they had procured and had was the dead body of the said John W. Hillman, whereas said John W. Hillman was not and is not dead; that since said time the said Hillman has kept himself concealed and has and is keeping himself concealed under assumed names for the purpose of consummating the conspiracy entered into as aforesaid; that no premium or payment of any kind has ever been made on or — account of said policy, & that said policy is void.

3rd. Said defendant, further answering, says that on or about the — day of ——, A. D. 1879, a dispute, difference, and controversy subsisted between said plaintiff and defendant, in this, to wit: Said plaintiff claimed that one John W. Hillman, the person mentioned in the policy of insurance set forth in said plaintiff's petition, died near Medicine Lodge, in Barbour county, State of Kansas, on or about the — day of ——, A. D. 1879, from a gunshot wound caused by a gun being then and there accidentally discharged by one John S. Brown, and that by reason thereof a cause of action had accrued to her, this plaintiff, while the said defendant denied that the said John W. Hillman was dead and that any cause of action had accrued to said plaintiff.

That for the purpose of ending said dispute and controversy said plaintiff, for a good and valuable consideration to her by said *plaintiff* paid, made, executed, and delivered to said defendant her certain release and satisfaction in writing, of which the following is a true copy, to wit:

LEAVENWORTH, KANSAS, *Sept.* 15, 1879.

In consideration of one dollar to me in hand paid, the receipt whereof is hereby acknowledged, I hereby release, surrender, and acknowledge satisfaction in full of all claims against the
207 New York Life Insurance Company by reason of policy No. 134,418 issued by said company, dated Nov. 30, 1878, and for the sum of ten thousand dollars on the life of my husband, John W. Hillman, and hereby enter satisfaction in full and order the dismissal of any and all suits or proceedings commenced or that hereafter may be commenced by any person in my behalf for the collection of the same.

(Signed) SALLIE E. HILLMAN.

Attest:
W. J. BUCHAN.
JOHN H. BROWN.

Wherefore defendant asks judgment that said policy be adjudged null and void and for costs.

J. W. GREEN,
GEO. J. BARKER,
Att'ys for Defendant.

Endorsed: No. 3148. Sallie E. Hillman *vs.* The New York Life Insurance Company. Amended answer. Filed June 7, 1881. A. S. Thomas, clerk. J. W. Green, Geo. J. Barker, att'ys for def't.

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY OF NEW YORK.

It is hereby stipulated and agreed by the parties hereto that the plaintiff shall have thirty days in which to file a reply to defendant's amended answer filed herein, and that this cause stand continued until the November term, A. D. 1881, of this court.

208

S. A. RIGGS,
JNO. HUTCHINGS,
R. J. BORGHALTHAUS,
Att'ys for Plaintiff.
GEO. J. BARKER &
J. W. GREEN,
Att'ys for Defendant.

Endorsed: No. 3148. Sallie E. Hillmon *vs.* The N. Y. Life Ins. Company. Stipulation. Filed June 14, 1881. A. S. Thomas, clerk.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

TUESDAY, *June* 14, 1881.

Continued as per stipulation.

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 28th day of November, A. D. 1881, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

FRIDAY, *December* 9, 1881.

Continued on defendant's application.

209 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY.

And now comes the defendant and moves the court here for an order requiring the plaintiff and her attorneys of record, to wit, L. B.

Wheat, John Hutchings, R. J. Borgolthaus, and Samuel A. Riggs, to give further and additional security for costs herein, for the reason, first, that the security heretofore given is wholly inadequate and insufficient; that Lemuel Evans, security for the costs therein, is wholly insolvent.

Second. Because the said attorneys are directly and pecuniarily interested in the result of this suit and are abundantly able to give security for costs herein.

That since the decision of the application heretofore made in this action for additional security for costs a large amount of costs have already accrued and much more costs and expenses will necessarily be incurred by the defendant in the preparation and trial of this action.

J. W. GREEN &
GEO. J. BARKER,
Att'ys for Def't.

Endorsed: No 3148. Sallie E. Hillmon *vs.* The New York Life Insurance Company. Motion for additional security for costs. Filed June 13, 1882. A. S. Thomas, clerk, by Geo. N. Holmes, deputy.

210 UNITED STATES OF AMERICA, *District of Kansas*, } *ss*:

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 5th day of June, A. D. 1882, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

WEDNESDAY, *June* 14, 1882.

The defendants' motion to require the plaintiff to give additional security for costs came on to be heard and was argued by counsel; on consideration whereof it is ordered by the court that said motion be, and is hereby, overruled; to which ruling of the court the defendants then and there excepted.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 3149.

Now comes the plaintiff in the above-entitled actions, by L. B.

Wheat, John Hutchings, S. A. Riggs, and R. J. Borgalthaus, her attorneys, and the defendants, by J. W. Green and Geo. J. Barker, their attorneys; and, it appearing to the court that the above-entitled actions are of like nature and relative to the same question, and to avoid unnecessary cost and delay, and that it is rea-
211 sonable to do so, it is ordered by the court that said actions be, and the same are hereby, consolidated for trial; to which ruling and decision of the court the defendants then and there duly excepted. And to try the issues joined comes a jury, to wit, R. B. McClure, Thomas White, James M. Walthal, William Stockebrand, E. H. Hutchings, Leonard Bradbury, J. T. Fulton, Daniel Horville, Wm. Lyons, J. S. Todd, John P. Gleich, and Samuel Kieser, twelve good and lawful men of the body of the district of Kansas, who being duly empaneled and sworn to well and truly try the matters submitted to them in this action and a true verdict give according to the law and evidence, *and* thereupon the trial of this case is proceeded with; and, the trial not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *June* 15, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

212 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 16, 1882.

Now come the parties herein, same as on yesterday; and, the jurors

empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *June* 17, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until Monday.

213 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *June* 19, 1882.

Now come the parties herein, same as on Saturday last; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 20, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

214 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 3149.

WEDNESDAY, *June* 21, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *June* 22, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of

this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

215 SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

MONDAY, *June* 26, 1882.

The defendant presents to the court its amended answer herein and asks leave to file the same; on consideration whereof it is ordered by the court that the defendant be, and is hereby, allowed to file said amended answer without prejudice to the trial of this action being now proceeded with, notwithstanding any issue thereby made or that may be made by any reply that may be filed thereto.

216 SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *June* 26, 1882.

Now come the parties herein, same as on Friday last; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 27, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the

time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

217 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *June* 28, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *June* 29, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

218 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 30, 1882.

Now come the parties herein, same as on yesterday; and, the

jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *July* 1, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and the jury, having heard the evidence, arguments of counsel, and instructions of the court, retire under the charge of a sworn bailiff for deliberation; and the
219 jury having been kept together until it satisfactorily appears that there is no probability of their agreeing, it is ordered by the court that they be, and are hereby, discharged.

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } No. 3148.

And now comes the defendant and moves the court for an order requiring said plaintiff to give additional security for costs herein, for the following reasons:

1st. That the sureties on the undertaking for costs in said action, as well as also said plaintiff, are insolvent, and the security given is wholly inadequate.

2. Because said sureties are non-residents of the State of Kansas.

3rd. Because the attorneys of record of said plaintiff own an interest in the subject-matter of the suit and are pecuniarily interested therein and in the results thereof.

GEO. J. BARKER,
J. W. GREENE,
Att'ys for Def't.

Endorsed: No. 3148. Sallie E. Hillmon *vs.* The N. Y. Life Ins. Company of N. Y. Motion for additional security for costs. Filed Nov. 29, '82. A. S. Thomas, clerk, by F. E. McCrary, D. C.

220 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 27th day of November, A. D. 1882, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

WEDNESDAY, *November* 29, 1882.

Continued by consent, including motion for additional security for costs.

221 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 4th day of June, A. D. 1883, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 8, 1883.

The defendant's motion for additional security for costs in said actions came on to be heard and was argued by counsel; on consideration whereof it is ordered by the court that plaintiff, within ninety days from this time, give security for future costs of the officers of this court, to be approved by the clerk. Continued.

222 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE CO. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE CO. OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *Oct.* 9, 1883.

Now comes said plaintiff herein, by L. B. Wheat, her attorney, and on her motion the time in which she was heretofore required to give security for certain costs herein is extended to the first day of November next.

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Pl't'ff,
vs.
MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant. } No. 3147.

SALLIE E. HILLMON, Pl't'ff,
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant. } No. 3149.

SALLIE E. HILLMON, Plaintiff,
vs
NEW YORK LIFE INSURANCE COMPANY. } No. 3148.

I hereby enter myself as security for and promise to pay all costs in the above-entitled actions which may accrue to any of the officers of this court subsequently to the 8th day of June, A. D. 1883, and in default of payment by the plaintiff of said costs I hereby agree and stipulate that execution may issue against my property
223 for any such costs taxed against said plaintiff.

Dated this eighth day of October, A. D. 1883.

WM. T. SINCLAIR.

Approved.
A. S. THOMAS, *Clerk.*

Endorsed: Nos. 3147, 3148, 3149. Sec. for costs. Filed Oct. 10, 1883. A. S. Thomas, clerk.

UNITED STATES OF AMERICA, } *sct:*
District of Kansas, }

In U. S. Circuit Court.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE CO. OF NEW YORK, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INS. COMPANY, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE CO.

STATE OF KANSAS, } *sct:*
County of Douglas, }

William T. Sinclair, being duly sworn, on his oath deposes and says that he is security for costs in the above consolidated cases under the order made at the June term, A. D. 1883, of said court, and that he is worth the sum of ten thousand dollars over and above his debts, liabilities, and exemptions, and that said values are in real estate situate in the county of Douglas and State of Kansas; and further he saith not.

WM. T. SINCLAIR.

Subscribed & sworn to before me this 1st day of November, A. D. 1883.

[SEAL.] CHAS. CHADWICK,
Notary Public, Douglas County.

Com. expires Sept. 7, 1887.

224 Endorsed: Nos. 3147, 3148, 3149. Sallie E. Hillmon *vs.* The Mutual Life Ins. Co. of New York *et als.* *Instification* of surety. Filed Nov. 1, 1883. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

In the Circuit Court of the United States for the District of Kansas.
November Term, A. D. 1883.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant.

It is hereby stipulated and agreed that the above cases be, and the same are hereby, continued until the next term of the said court.

SALLIE E. HILLMON, *Pl'ff,*
By R. J. BORGALTHAUS, S. A. RIGGS,
L. B. WHEAT & JNO. HUTCHINGS,
Her Att'ys.
J. W. GREEN AND GEO. J. BARKER,
Att'ys for said Defendants.

Endorsed: No. 3147. Sallie E. Hillmon *vs.* The N. Y. Ins. Co. *et al.* Stipulation for continuance. Filed Nov. 26, 1883. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held in the city of Topeka, in said district, on Monday, the 26th day of November, A. D. 1883, proceedings were had and appear of record in words and figures fol-
225 lowing, to wit:

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

MONDAY, *Nov.* 26, 1883.

Continued.

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 24th day of November, A. D. 1884, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

FRIDAY, *Nov.* 28*th*, 1884.

Set for first Monday in March.

226 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY.

Now, at this day, comes the said defendant and moves the court for an order setting aside and vacating an order heretofore made in this cause, to wit, at the June term of this court, A. D. 1882, consolidating the said cause with that of Sallie E. Hillmon *vs.* The Life Insurance Company of New York, being cause No. 3147 on the docket of this court, and Sallie E. Hillmon *vs.* The Connecticut Mutual Life Insurance Company, being cause No. 3149 on the docket of this court, for the reason that said causes cannot by law be consolidated.

The said defendant also demands a separate trial of its action herein.

C. S. GLEED,
Attorney for said Def't.

Endorsed: No. 3148. Sallie E. Hillmon *vs.* The New York Life Insurance Company. Motion. Filed June 4, 1885. A. S. Thomas, clerk.

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant.
Amended Answer.

1st. The defendant, The New York Life Insurance Company, for its first defense, represents and shows to the court that it denies all and singular the allegations and averments contained and set forth in said plaintiff's petition filed herein.

2nd. Said defendant, further answering, says that on and before the 30th day of November, A. D. 1878, one John W. Hillman,
227 John H. Brown, and Levi Baldwin and divers other persons, to the defendant unknown, unlawfully and fraudulently confederating, conspiring, contriving, and intending to cheat and defraud this defendant, procured a large amount of insurance to be taken on the life of the said John W. Hillman, to wit: In the New York Life Insurance Company, by its policy numbered 134,418 and dated November 30th, 1878, for the sum of ten thousand dollars; in the Mutual Life Insurance Company of New York, by its policy numbered 195,132 and dated December 10th, 1878, for the sum of ten thousand dollars, and in the Connecticut Mutual Life Insurance Company, by its policy numbered 153,614 and dated March 4th, 1881, for the sum of ten thousand dollars.

That thereafter and in pursuance of said conspiracy and with said intent said Hillman, Brown, and Baldwin did falsely and fraudulently pretend and represent unto this defendant and others that said Hillman was dead, and did, in or about the months of March

and April, A. D. 1879, and thereafter, for the purpose of securing the payment of said policies and obtaining the money thereon, falsely and fraudulently claim, pretend, and represent unto this defendant that the said John W. Hillman was dead, and that a certain dead body which they had procured and had was the dead body of the said John W. Hillman, whereas said John W. Hillman was not and is not dead; that since said time the said Hillman has kept himself concealed under assumed names for the purpose of consummating the conspiracy entered into as aforesaid; that no premium or payment of any kind has ever been made on account of said policy, and that said policy is void.

3rd. Said defendant, further answering, says that on or about the — day of ——, A. D. 1879, a dispute, difference, and controversy subsisted between said plaintiff and defendant, in this, to wit:

228 Said plaintiff claimed that one John W. Hillman, the person mentioned in the policy of insurance set forth in said plaintiff's petition, died near Medicine Lodge, in Barbour county, State of Kansas, on or about the — day of ——, A. D. 1879, from a gunshot wound caused by a gun being then and there accidentally discharged by one John S. Brown, and that by reason thereof a cause of action had accrued to her, this plaintiff, while the said defendant denied that the said John W. Hillman was dead, and that any cause of action had accrued to said plaintiff.

That for the purpose of ending said dispute and controversy said plaintiff, for a good and valuable consideration to her by said *plaintiff* paid, made, executed, and delivered to said defendant her certain release and satisfaction in writing, of which the following are true copies, to wit:

LEAVENWORTH, KANSAS, *Sept.* 15, 1879.

In consideration of one dollar to me in hand paid, the receipt whereof is hereby acknowledged, I hereby release, surrender, and acknowledge satisfaction in full of all claims against the New York Life Insurance Company of New York by reason of policies Nos. 134,418 and 134,548, issued by said company, dated respectively Nov. 30th and Dec. 10th, 1878, and for the sum of five thousand dollars each, on the life of my husband, John W. Hillman, and I hereby enter satisfaction in full and order the dismissal and discontinuance of any and all suits or proceedings commenced or that hereafter may be begun or prosecuted by any person or persons in my behalf for the collection of the same.

SALLIE E. HILLMAN.

Attest:
W. G. BUCHAN.
JOHN H. BROWN.

WYANDOTTE, KAS., *Sept. 25th*, 1879.

In consideration of one dollar to me in hand paid, the receipt whereof is hereby acknowledged, I hereby release, surrender,

229 and acknowledge satisfaction in full of all claims against the New York Life Insurance Company of New York by reason

of policy numbered 134,418, dated on the 30th day of November, 1878, and policy number 134,548, dated on the 10th day of December, 1878, and for five thousand dollars each, issued on the life of my husband, John W. Hillman, and I hereby enter satisfaction in full and order the dismissal and discontinuance of any and all suits or proceedings commenced or that may hereafter be begun by any person or persons in my behalf for the collection of the same.

SALLIE E. HILLMAN.

Attest:

H. G. BUCHAN.

Wherefore defendant asks judgment that said policy be adjudged null and void and for costs.

C. S. GLEED,
Attorney for Defendant.

Endorsed: No. 3148. Sallie E. Hillmon *vs.* The New York Life Insurance Company. Amended answer. Filed June 5, 1885. A. S. Thomas, clerk. J. W. Green & Geo. J. Barker, att'ys for def'ts.

230 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 1st day of June, A. D. 1885, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

FRIDAY, *June* 5, 1885.

The defendant's motion, herein filed June 4, 1885, to set aside and vacate an order made in this cause consolidating it with other causes therein named for trial and for a separate trial, came on to be heard and was argued by counsel; on consideration whereof the court doth overrule said motion; to which ruling and decision of the court the defendant duly excepted and excepts.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

It is ordered by Hon. Samuel F. Miller, presiding justice, that

these actions be tried before Hon. D. J. Brewer, sitting apart for that trial; and thereupon these actions came on for trial in
231 their order together.

Now comes the plaintiff in the above-entitled actions by L. B. Wheat, John Hutchings, S. A. Riggs, and R. J. Borgholthaus, her attorneys, and the defendants by J. W. Green and Geo. J. Barker, their attorneys; and said entitled action having been heretofore consolidated for trial, and to try the issues joined come a jury, to wit, B. M. Tanner, J. P. G. Creamer, C. O. Knowles, H. D. Shepard, Nelson Giles, Jr., R. H. Stott, G. W. Greever, Wm. M. Nace, Joseph Kleinfield, Wm. M. Hamm, H. A. Cook, and P. B. Maxon, twelve good and lawful men of the body of the district of Kansas, who being duly empanelled and sworn to well and truly try the matters submitted to them in this action and a true verdict give according to the law and evidence, *and* thereupon the trial of this case is proceeded with; and, the trial not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *June* 6, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanelled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

232 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant. } Amended Reply.

The plaintiff, for her amended reply to the amended answer of the defendant herein filed, says—

First. That she denies each and every allegation in said amended answer contained.

Second. That the said so-called releases and satisfactions in writing in the third defense in defendant's said amended answer set out was

obtained from the plaintiff without any consideration whatever, and was and is inoperative and void.

Third. That at the county of Barbour, in the State of Kansas, on or about the 17th day of March, A. D. 1879, John W. Hillmon, the husband of this plaintiff and the person whose life was insured in and by the policy set out in plaintiff's petition, died from a gunshot wound produced by the accidental discharge of a gun in the hands of one John H. Brown; that on or about the 15th day of September, A. D. 1879, the date of the so-called release and satisfaction set out in said defendant's third defense in its amended answer, the defendant, by its duly authorized agents and other persons by the procurement of said defendant, falsely and fraudulently represented to this plaintiff that her husband, the said John W. Hillmon, was then still living and had been seen alive since his alleged death, on or about the 17th day of March, A. D. 1879, and that they could produce him, the said Hillmon, alive as aforesaid, and that the said John H. Brown would testify on the trial of any action brought to recover the amount due under or upon the said policies that the said
233 Hillmon was not dead, but was still living, and that the body which had been produced and identified by her, the said plaintiff, as the body of her said husband was not the body of the said John W. Hillmon, but was the body of another and different person, and, to induce the plaintiff to believe the said false and fraudulent representations, and that the said Brown would testify as aforesaid, and to prevent her from suing on the policies mentioned in the petition herein and to induce her to surrender the same, procured the said John H. Brown, upon whose testimony the plaintiff was relying to establish the fact of the death of her said husband and her right to recover the amount of said policies, to make a statement in writing to the effect that the said John W. Hillmon was still living as aforesaid, and that the body which had been produced and identified by her as the body of her said husband was not the body of the said John W. Hillmon, but was the body of another and different person, who had been murdered by the said John W. Hillmon, and procured the said John H. Brown to state to this plaintiff that he would in any action brought on or under said policies testify as aforesaid, and that he would testify that the whole transaction relating to the procurement of said policies and the alleged death of her said husband was a fraud, and that she was a party to said fraud; that on or about the said 15th day of September, A. D. 1879, the said defendant, by its duly authorized agents and other persons by its procurement, fraudulently represented to the plaintiff that unless she executed and delivered the release of the policies which are set out in the third defense of said defendant's amended answer they would prosecute her for conspiring with divers other persons to defraud said defendant out of the amount of said policy, and that upon the said testimony of the said Brown she would be convicted, but that they would save her from such prosecution if she made and delivered the re-
234 lease aforesaid; that the said plaintiff, being in ill health, was overcome by the said false and fraudulent statements and threats so made as aforesaid, and, relying upon the said false and

fraudulent statements as to what the said Brown would testify to, and being thereby led and influenced to believe that the said Brown would testify as the defendant, its agents, and other persons by its procurement had represented, contrary to the truth and facts in the premises, and that she could not against such testimony of the said Brown recover the amount due her on the said policies, was induced by said defendant, its agents and other persons acting in its behalf, to sign and deliver without consideration the so-called releases and satisfactions set out in the third defense of the defendant's amended answer.

That the said representations so made by the said defendant, its agents, and other persons by the procurement and in the behalf of the said defendant at the time and times the same were made and at the time the said so-called releases and satisfactions were signed by this plaintiff, were false and were known to be false by the said defendant, its said agents, and the said other persons making the same, and the same were made for the purpose and with the intention of defrauding this plaintiff of her right to recover the amount due her on and under the said policies.

L. B. WHEAT,
JOHN HUTCHINGS,
SAM'L A. RIGGS &
R. J. BORGHALTHAUS,
Att'ys for Plaintiff.

Endorsed: No. 3148. Sallie E. Hillmon *vs.* The New York Life Insurance Company. Amended reply to amended answer. Filed June 6, 1885. A. S. Thomas, clerk, by Frank H. Holt, deputy.

235 SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *June* 8, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE — OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 9, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *were* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

236 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *June* 10, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *June* 11, 1885.

Now come the parties herein, same as on yesterday; and, the

jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

237 SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 12, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *June* 13, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

238 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *June* 15, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 16, 1885.

Now come the parties herein, same as on yesterday; and, the jury empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

239 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *June* 17, 1885.

Now come the parties herein, same as on yesterday; and, the

jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *June* 18, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

240 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 19, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *June* 20, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

241 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *June* 22, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanelled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 23, 1885.

Now come the parties herein, same as on yesterday; and, the

jurors empanelled herein being called and all being present, the trial of these causes *are* proceeded with, and the jury, having heard the evidence, arguments of counsel, and instructions of the court, retire under the charge of a sworn bailiff for deliberation.

242 SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *June* 24, 1885.

Now come the parties herein, same as heretofore; and the jurors empanelled herein, come into open court under charge of their sworn bailiff, are called and are all present, and, after having been kept together until it satisfactorily appears that there is no probability of their agreeing, it is ordered by the court that they be, and are hereby, discharged.

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 23rd day of November, A. D. 1885, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

FRIDAY, *Nov.* 27, 1885.

Continued by consent.

243 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 22nd day of November, A. D. 1886, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SATURDAY, *January* 22, 1887.

Continued by consent of counsel.

At a term of the circuit court of the United States of America for

the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 28th day of November, A. D. 1887, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

MONDAY, *January* 16, 1888.

Motion of W. T. Sinclair to be discharged from further security for costs in the foregoing cause is by leave of court withdrawn.

244 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant.

The defendant, The Mutual Life Insurance Company of New York, moves, asks, and requests the court to vacate and set aside the order heretofore made consolidating this case for trial with two other cases, and asks and requests a separate trial hereof.

J. W. GREEN,
Att'y for Def't.

Endorsed: No. 3148. Sallie E. Hillmon *vs.* The New York Life Insurance Co. Motion. Filed Feb. 29, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy. J. W. Greene, att'y for def't.

245 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *Feb.* 29, 1888.

This day the three causes above named coming up for trial in pursuance of the order heretofore made by this court requiring the same to be tried at one and the same time and as one cause, and the parties thereto appearing by counsel, thereupon each of the said named defendants filed its motion asking the court to set aside the order heretofore made requiring the causes to be tried as one and asking that each case be tried separately; and the said motions, being submitted to the court, were by the court overruled, it being ordered that, in pursuance to the order heretofore made, the causes

should be tried as one cause; to which rulings and order each of the said defendants at the time duly excepted. And thereupon, by direction of the court, a jury was empanelled for the trial of said causes, the several defendants claiming the right to challenge three persons peremptorily for each defendant; which claim was denied, the court ruling that but three peremptory challenges could be exercised by the defendants as a whole; to which ruling each of the said defendants at the time duly excepted. And, after three parties called into the jury-box had been peremptorily challenged by counsel for defendants, each of said defendants asked to be permitted to challenge one or more jurors peremptorily, which
246 request was refused by the court; to which ruling each of the said defendants at the time duly excepted. And after the defendants had challenged three parties peremptorily, there being in the box twelve good men, to wit, Samuel Kozier, G. W. Coffin, James Rood, Jacob Moon, J. S. Bouton, A. S. Davidson, H. S. Miller, Riley Elkins, J. S. Earnest, J. W. Farnsworth, Enoch Chase, and Furman Baker, against whom no challenges for cause existed or were made by either plaintiff or defendants, the same were duly sworn as the jury in said causes, and thereupon the opening statements for the respective parties were made to the jury, upon the conclusion of which the court adjourned until 9.30 a. m. of Thursday.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *March* 1, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

247 SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *March* 2, 1888.

Now come the parties herein, same as yesterday; and, all the jury

being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *March* 3, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until Monday next.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

248 SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *March* 5, 1888.

Now come the parties herein, same as on Saturday last; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *March* 6, 1888.

Now come the parties herein, same as yesterday; and, all the jury

being present, the trial hereof is proceeded with, and, the trial hereof not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
249 THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *March* 7, 1888.

Now come the parties herein, same as yesterday; and thereupon, with leave of court, plaintiff amends her petitions herein, to which defendants except; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON,
vs
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *March* 8, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
250 THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *March* 9, 1888.

Now come the parties herein, same as yesterday; and, all the jury

being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *March* 10, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until Monday.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *March* 12, 1888.

Now come the parties herein, same as on Saturday last;
251 and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *March* 13, 1888.

Now come the parties herein, same as yesterday; and, all the jury

being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *March* 14, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

252 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *March* 15, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *March* 16, 1888.

Now come the parties herein, same as yesterday; and, all the jury

being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

253 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *March* 17, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until Monday next.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *March* 19, 1888.

Now come the parties herein, same as on Saturday last; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

254 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *March* 20, 1888.

Now come the parties herein, same as yesterday; and, all the jury

being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

255 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *March* 21, 1888.

Now come the parties, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and the jury having heard the evidence and arguments of counsel, and being instructed by the court, retire for deliberation under charge of an officer duly sworn, and the jury, having agreed upon their verdicts, are duly conducted into court and render their verdicts herein in the words and figures following, to wit:

In the Circuit Court of the United States for the District of Kansas.

In the case of—

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

256 We, the jury in this action, find for the plaintiff and assess her damages against the defendant at the sum of fifteen thousand and sixty dollars ($15,060).

G. W. COFFIN, *Foreman.*

And thereupon, on request of the defendants, the jury are duly polled, and each of them duly answers as to each of said verdicts respectively that it is his verdict, and thereupon the jury are discharged.

257 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant.

Now comes the said defendant and moves the court to vacate and set aside the verdict and judgment heretofore rendered in the above-entitled action and grant the defendant a new trial therein for the following reasons, to wit:

1. Misconduct of the plaintiff in the trial of said action.

2. Misconduct on the part of the jury.
3. Because said verdict and judgment *is* contrary to the evidence.
4. Because said verdict and judgment *is* contrary to law.
5. Because of error of law occurring at the trial of said action and duly excepted to by the defendant at the time.
6. Newly discovered evidence material to the defendant which it could not by reasonable diligence have discovered upon the trial of this action.
7. Misconduct of plaintiff's attorneys on the argument of said case to the jury.

J. W. GREEN,
Attorney for the Defendant.

Endorsed: No. 3148. Sallie E. Hillmon *vs.* The New York Life Insurance Company. Motion for new trial. Filed March 21, 1888. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

258 SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *March* 22, 1888.

Now come the parties herein, same as yesterday. These causes coming up before the court, counsel for plaintiff moved for judgment against the several defendants upon the verdicts rendered, and defendants asked that action thereon be postponed until the motions for new trial had been heard and disposed of, and further asked that time be granted for the preparation and settlement of a bill of exceptions; and thereupon the court ordered that the time for settling and signing the bill of exceptions be extended to June 28th, 1888; that defendants have until May 15th, 1888, to prepare and serve upon plaintiff a copy of their bill of exceptions; that plaintiff have until June 20th to suggest amendments and serve copy thereof on defendants, and that the bill and amendments be submitted on June 28th, at Dubuque, Iowa, for settlement & signing, the same, when so signed and filed, to have the same force and effect as though filed this day. It was further ordered by the court that defendants have leave to file an amended motion for new trial by Monday, March 26, and to file and serve upon plaintiff affidavits in support thereof by April 15th, 1888, the plaintiff having leave to file & serve counter-affidavits by May 15th, the motion for new trial to be fully submitted on June 28th, at Dubuque, Iowa, and all further action on motion for judgments on the verdicts to be suspended

until that date, when same will be heard in connection with motion for new trial.

259 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant.

Consolidated Case.

Be it remembered that this trial came on to be heard on the 29th day of February, A. D. 1888, in the circuit court of the United States sitting in and for the district of Kansas, at the November term thereof, A. D. 1887, and thereupon each of the defendants in the several cases heretofore consolidated by the order of this court, to wit, on the — day of ——, A. D. 18—, at the —— term of the said court, filed their several motions in said cause; which said motions are in the words and figures following—that is to say:

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK MUTUAL LIFE INSURANCE COMPANY, Defendant.

The defendant, The New York Mutual Life Insurance
260 Company, moves, asks, and requests the court to vacate and set aside the order heretofore made consolidating this case for trial with two other cases, and asks and requests a separate trial thereof.

J. W. GREEN,
Attorney for said Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.

The defendant, The Mutual Life Insurance Company of New York, moves, asks, and requests the court to vacate and set aside the order heretofore made consolidating this case for trial with two other cases, and asks and requests a separate trial thereof.

GEORGE J. BARKER,
Attorney for said Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant.

The defendant, The Connecticut Mutual Life Insurance Company, moves, asks, and requests the court to vacate and set aside the order heretofore made consolidating this case for trial with two other cases, and asks and requests a separate trial thereof.

CHARLES S. GLEED,
Attorney for said Defendant.

And it appears that at the —— term of this court the following order consolidating said causes for trial had been entered, to wit:

UNITED STATES OF AMERICA, *District of Kansas*, } *ss:*

At a term of the circuit court of the United States of
261 America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 5th day of June, 1882, proceedings were had and appear on record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 3149.

WEDNESDAY, *June 14th*, 1882.

Now comes the plaintiff in the above-entitled actions, by L. B. Wheat, John Hutchings, S. A. Riggs, and R. J. Borgalthaus, her attorneys, and the defendants, by J. W. Green and George J. Barker, their attorneys; and, it appearing to the court that the above-entitled actions are of like nature and relative to the same question, and to avoid unnecessary cost and delay, and that it is reasonable to do so, it is ordered by the court that said actions be, and the same are hereby, consolidated for trial; to which ruling and decision of the court the defendants then and there duly excepted. And
262 to try the issues joined comes a jury, to wit, R. B. McClure, James M. Wathal, E. H. Hutchings, J. T. Fulton, W. M. Lyons, John P. Gleich, Thomas White, William Stockebrand, Leonard Bradbury, Daniel Horville, J. S. Todd, Samuel Kieser, twelve good and lawful men of a body of the district of Kansas, who being duly empanelled and sworn to well and truly try the matter submitted to them in this action and a true verdict give according to the law and evidence, *and* thereupon the trial of this

case is proceeded with, and, the trial not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the future hearing postponed until to-morrow.

Thereupon the court overruled the present motion to set aside said order of consolidation, it being ordered that, in pursuance to the order heretofore made, the causes should be tried as one case; to which ruling and order the defendants and each of them duly excepted.

Be it further remembered that in the empaneling of the jury the defendants each claimed the right to challenge peremptorily three jurors on behalf of each defendant. Thereupon the court ruled that, the cases having been consolidated, the defendants were entitled to three peremptory challenges only; to which ruling of the court each of the defendants then and there duly excepted.

Be it further remembered that when the defendants were called upon to exercise their peremptory challenges the Mutual Life Insurance Company challenged one juror peremptorily, the New York Life Insurance Company challenged one juror peremptorily,
263 and the Connecticut Mutual Life Insurance Company challenged one juror peremptorily; and thereupon the court held that those challenges exhausted the right of peremptory challenge on the part of the defendants, and each of the said defendants claimed and desired to exercise the right of challenging peremptorily one or more of said jury in addition to the three already challenged; which claim was refused by the court, and to which ruling each of the defendants at the time duly excepted.

Be it further remembered that thereupon the plaintiff, to sustain the issues in her behalf, introduced in evidence the several policies of insurance upon the life of John W. Hillmon issued by the defendant companies and declared upon by plaintiff in the several actions on trial; also evidence tending to show that formal proofs of death had been furnished these companies, as required by the terms of said policies; also evidence tending to show that the said John W. Hillmon in March, 1879, was travelling through Southern Kansas, in company with one John H. Brown, in search of a location for a cattle ranch; that on the 18th day of March, 1879, the said parties were in camp on Crooked creek, in Barbour county, Kansas; that on the evening of said day said Brown notified parties living in the neighborhood of the camp that he had accidentally shot his companion, John W. Hillmon, causing his instant death; that the parties so notified went to the camp and found a dead body by the campfire, said by Brown to be the body of Hillmon; that said body was removed the next day to Medicine Lodge, the county-seat of Barbour county, and, after an inquest thereon, was buried in the grave-yard at that place; that, upon information of said occurrence being sent to Lawrence, Kansas, where plaintiff resided, as well as the agents of the defendant companies, the plaintiff sent Levi Baldwin and Alva Baldwin to Medicine Lodge, and the defendants sent
264 Theo. Wiseman and Samuel Walker; that upon the arrival of these parties at Medicine Lodge the body was disinterred and

taken to Lawrence Kansas; that an inquest was there held on the body, after which the same was buried by the plaintiff in the cemetery at Lawrence, Kansas; that plaintiff and others who knew John W. Hillmon testified that said body so brought to Lawrence was the body of said John W. Hillmon; also evidence tending to identify the said body as being that of John W. Hillmon; also evidence tending to show the pecuniary condition and ability of said Hillmon at the time he took out the insurance upon his life; also evidence tending to show when, how, and under what circumstances the releases signed by plaintiff were given, and that same were without consideration.

Be it further remembered that, touching the affidavit made by John H. Brown and introduced as evidence for the purpose of contradicting him, a large amount of evidence was introduced by both parties tending to show the circumstances leading up to the making of said affidavit, the defendants claiming that the affidavit had been voluntarily signed & sworn to by Brown, and the plaintiff claiming that Brown had been induced to make it by the representations of Buchan made directly to him & also through his brother, the said Buchan himself testifying that he had demanded & received compensation from the defendants for the procuring said affidavit, and also the execution of the written releases signed by plaintiff; and thereupon the plaintiff, to further sustain the issues upon her part, read in evidence from the deposition of John H. Brown as follows:

Q. 23. What were you next employed by Hillmon to do?

A. To take a trip down to Southern Kansas to open up a cattle ranch.

Q. 24. Did you take that trip, and with whom?

A. I taken that trip with John W. Hillmon.

265 Q. 25. When and from where did you start?

A. We started from Lawrence, Kansas, in the year 1878, about a week or ten days before Christmas of that year.

Q. 26. How did you go?

A. Went by railroad to Wichita, Kansas. From Wichita we went in a spring wagon with a pair of horses.

Q. 27. Where did you go to from Wichita?

A. Medicine Lodge, in Barbour county, Kansas.

Q. 28. From Medicine Lodge, Barbour county, Kansas, where did you go to?

A. To Sun City—northwest, I would call it.

Q. 29. From Sun City where did you go?

A. Went from there to a town on the Arkansas river and on the Atchison, Topeka & Santa Fé railroad. I can't call the name.

Q. 30. From that town on the Atchison, Topeka & Santa Fé railroad where did you go?

A. To the Great Bend or Big Bend—a town named by that name; from there on to Hutchinson and several towns—I don't remember the names—to Wichita.

Q. 31. About what time did you arrive at Wichita?

A. About the 18th or 20th of January.

Q. 32. Who went with you on that trip?
A. John W. Hillmon.
Q. 33. What was the purpose of that trip?

Objected to by defendants because it is incompetent, irrelevant, and immaterial. Overruled, and exception saved.

A. The hunting up and locating a cattle ranch.

Also from the cross-examination of said John H. Brown, as follows:

266 Q. 338. On the 5th day of April, A. D. 1879, in the office of George J. Barker, in Lawrence, Kansas, were you not shown a postal card from Griffin, Texas, directed to Mr. Brocklesby, city marshal of Lawrence, inquiring if a man by the name of Hillmon lived in Lawrence, and stating in substance that he had a difficulty with a train of cattle; also stating that Hillmon formerly lived near Grasshopper, and if you were not asked if Hillmon was ever at Griffin, Texas, and if in reply thereto you did not state that Hillmon had been at Griffin, Texas, and that you was with him there?

Objected to by plaintiff's counsel, first, because the question calls for immaterial, irrelevant, and incompetent testimony; second, because the subjects of inquiry are not proper subjects of cross-examination; third, because the question is leading; fourth, because the question calls for the oral statement of the contents of a written instrument, which is not the best evidence of such contents; fifth, the question contains inquiries as to several separate and distinct subjects; sixth, if the question is asked for the purpose of obtaining an answer from the witness to be contradicted it is incompetent, because the subjects of inquiry are immaterial to the issues in this case. Sustained, and exception saved by defendants.

Q. 1244. State if the following is the statement made and prepared on the 4th day of September, 1879, at your brother's residence, situated near Parkville, Missouri, and which you afterward saw at the office of Francis M. McDonald, at Parkville, Missouri, and which you afterwards tore up and put in the stove at the office of W. J. Buchan, in Wyandotte, Kansas:

"STATE OF MISSOURI, } ss:
County of Platte, }

267 John H. Brown, of lawful age, being first duly sworn according to law, deposes and says:

My name is John H. Brown; my age, thirty years. I am acquainted with John W. Hillmon, also Mrs. S E. Hillmon and Levi Baldwin, of Douglas county, Kansas; have known John W. Hillmon for about five years; have been with him a good deal for the past two years; was with him last March, at Wichita and on the trip from there to and around Medicine Lodge, in Barbour county, Kansas, where it is claimed that I killed him on the 17th of March, 1879. Along about the 10th of December, 1878, John W. Hillmon and Levi Baldwin talked about and entered into a conspiracy to

defraud the New York Life Insurance Company and the Mutual Life — of New York out of some money, to be obtained by means of effecting a policy or policies on the life of said John W. Hillmon. Baldwin was to furnish the money to pay the premiums and to keep up the policies in case they had to be renewed. Our original arrangement was to get Hillmon's life insured for fifteen thousand dollars, but it was afterwards changed to twenty-five thousand dollars. Hillmon and myself were to go off southwest from Wichita, Kansas, ostensibly to locate a stock ranch, but in fact to in some way *to* find a subject to pass off as the body of John W. Hillmon, for the purpose of obtaining the insurance money aforesaid. We had no definite plan of getting a subject, but to in some manner get one. The final termination of the matter was the last idea thought of. Our first trip out from Wichita—the last days of December—while the snow was on the ground, we expected to find a subject that would appear to be Hillmon frozen to death, and that could not be identified only by the clothes and papers found on it, and so I could pass — off as Hillmon. We went from Wichita to Medicine Lodge; then direct to Sun City; from there to Kinsley; from there to Great Bend, on the Santa Fé road; then to Larned, and on to Wichita via Hutchinson. Hillmon
268 and myself were entirely alone on that trip. Iliff, of Medicine Lodge, saw Hillmon on this trip. We put up at his stable. I then staid at Wichita until the 4th of March. Hillmon in the meantime went up to Lawrence to see his wife and to get some more money. He returned about the 1st of March, and on the 5th we left on our second trip. We went due west to Cowskin creek, then west to Harper City, then to Medicine Lodge, on by Sun City and beyond some miles; then we turned northeast down Medicine river to a camp on Elm creek about eighteen miles north of Medicine Lodge, where Hillmon is claimed to have been killed. We got there about an hour before sundown and staid in camp until the next evening. We overtook a stranger on this trip the first day out from Wichita, about two or two and one-half miles from town, who Hillmon invited to get in and ride, and who he (Hillmon) proposed to hire and work for him on the ranch as proposed to be located. This man was with us during all this trip. Hillmon proposed to me that this man would do for a subject to pass off for him. I told him and contended with him that the man would not do to pass off for him, giving him various reasons why the man would not answer his description, and complained and objected because his proposition was to take the man's life, and I protested and said that was going beyond what we had agreed and something that I had never before thought of, and was beyond my grit entirely; but Hillmon seemed to get more deeply determined and more and more desperate in the matter. Pains were taken not to have more than two of us seen together in the wagon; sometimes one and then the other would be kept back out of sight. On his trip to Lawrence Hillman was vaccinated; his arm was quite bad. Hillmon kept at that man until he let him vaccinate him, which he did, taking his pocket knife and using virus from his own arm for the pur-

pose. He also traded clothes with him, Hillmon first giving
269 him a change of underclothing; then traded suits, the one he was killed in. The suit he was buried in was a suit Hillmon traded with Baldwin for. This man appeared to be a stranger in the country, a sort of an easy-go-long fellow, not suspicious or very attentive to anything. His arm became very sore, and he got quite stupid and dull. He said his name was either Berkley or Burgis, or something sounding like that. We always called him Joe. He said he had been around Fort Scott awhile, and also had worked about Wellington or Arkansas City. I don't know where he was from, nor where his home or friends were. I did not see him at Wichita that I know of. I had but very little to say to the man and less to do with him. He was taken in charge by Hillmon and yielded willingly to his will. I dreaded what I thought was to be done, and kept out of having any more to do with him than possible. I frequently remonstrated with Hillmon and tried to deter him from carrying out his intentions of killing the man. The next evening, after we got to the camp last named, the man Joe was sitting by the fire. I was at the hind end of the wagon, either putting feed in the box for the horses or taking a sack of corn out, when I heard a gun go off. I looked around and saw the man was shot, and Hillmon was pulling him away around to keep him out of the fire. Hillmon changed a day book from his own coat to Joe's and said to me everything was all right and in shape just as he wanted it, and that I need not be afraid but it would be all right. He told me to get on a pony and go down to a ranch about three-quarters of a mile and get some one to come up. He took Joe's valise and started north. This was about sundown. We had no arrangements about communicating with each other. He first proposed to do so, but I told him I did not want to know where he was; that in case I should I might find out in some other way. I have never heard a word from him
270 since. At Lawrence Mrs. Hillmon gave me to understand that she knew where Hillmon was, and that he was all right. The man over whom an inquest was held at camp, afterward at Medicine Lodge, and at Lawrence, Kansas, was the man Joe Burgis, or Berkley, killed by Hillmon as related above, and John W. Hillmon I believe to be still alive; at least he left our camp and went north, as stated above, after killing Joe. Hillmon said he would assume the name of William Marshall. Baldwin's wife and Mrs. Hillmon know all about this. In my testimony at Lawrence I stated the route taken as above described, but the man who I described as being in camp with us, and who I said went off with some wagons, was Joe, the man killed. I afterwards, some time in August, 1879, made four affidavits under great importunities from Baldwin, who came after me three different times, the last time persuading me to go with him to Kansas City, where Honorable Samuel Riggs insisted on my signing them. I don't think Mr. Riggs is aware of the facts in this case, nor the other counsel in the case. I make the above statement in this Hillmon case as the full and true facts in the case, regretting the part that I have taken in the affair."

The last question is objected to by counsel for the plaintiff for the following reasons: First, because it calls for testimony which is immaterial and irrelevant to the issues in this case; second, because it is not a cross-examination concerning any matter inquired about by the plaintiff in the examination-in-chief; third, because no conversations or statements held or made by the witness and W. J. Buchan or either of them when the plaintiff was not present or to which she has not given her assent are competent or admissible against her; fourth, because it is sought by the question and answer to prove the contents of a written document which is now in existence and within the control of the defendant in the action, which document
271 must be produced to the witness and identified by him and then offered as the best evidence of its contents; fifth, because it is not competent to prove in this way that the statement was made under oath, the original statement being in existence and under the control of the defendant; sixth, because the question calls for confidential communications between the witness and his attorney, W. J. Buchan, which are privileged and to contradict which the said W. J. Buchan cannot be called as a witness; seventh, because the evidence called for is otherwise incompetent. Sustained, and exception saved by defendants.

A. Part of that I remember stating, and part I don't remember anything about.

Q. 1245. Did you not sign this statement in the presence of and swear to it before Francis M. McDonald, at his office, in Parkville, Missouri, on the 4th day of September, 1879?

Objected to on same grounds as question last preceding. Sustained, and exception by defendants.

A. I wouldn't be positive now whether I did or not.

Q. 1246. Did you or did you not sign this statement in the presence of and swear to it before Francis M. McDonald, at his office, in Parkville, Missouri, on the 4th day of September, 1879, or at any other time?

Objected to by plaintiff on the same ground as question No. 1244, and for the further reason that the question has been repeatedly asked of this witness and fairly answered. Sustained, and exception saved the defendants.

A. I wouldn't be positive whether I did or not, at McDonald's office, and if I didn't, I didn't do it anywhere else.

Q. 1247. Did you sign this statement in the presence of
272 Francis M. McDonald and W. J. Buchan, at the office of McDonald, at Parkville, Missouri, on the 4th day of September, 1879, or at any other time?

Objected to by the plaintiff on the same grounds as question last preceding. Sustained, and exception saved by defendants.

A. I wouldn't be positive now whether I did or not.

Q. 1253. Did not this statement, the statement referred to in ques-

tion No. 1244, have attached to it the following words at the time you tore it up and put it in the stove at Buchan's office: "Subscribed in my presence and sworn to before me this 4th day of September, A. D. 1879—my term expires on the 2nd day of April, 1883—Francis M. McDonald, notary public"?

Objected to by plaintiff on grounds stated in objection to question No. 1244. Sustained, and *objection* saved by defendants.

Q. 1254. Did this statement that you tore up and put in the stove at Buchan's office, in the presence of Buchan and Mrs. Hillmon, have attached to it the words quoted in question No. 1253?

Objected to by plaintiff on same grounds as stated in objection to question No. 1244, and for the further reason that the same question has just been asked and fairly answered. Sustained, and exception saved by defendants.

Q. 1255. Did you examine it to see whether these words were attached to it?

A. No, sir.

Q. 1256. Did the statement which you tore up and put in the stove at Buchan's office, in the presence of Mrs. Hillmon, have the impression of a seal of any kind on it?

Objected to by plaintiff as incompetent for the reasons stated in objection to question No. 1244. Sustained, and exception
273 saved by defendants.

Q. 1268. Does question No. 1244 of this deposition contain a correct statement of the contents of the paper or statement written by Buchan in your brother's house at Parkville, Missouri, on or about the 4th day of September, 1879, which was present on the same day in the office of Francis M. McDonald, in Parkville, Platte county, Missouri, at the same time you and W. J. Buchan were there, which paper or statement you afterwards tore up and threw into the stove in the office of said Buchan, in the city of Wyandotte, Kansas? If not, state wherein the statement contained in said question differs from the statement, above referred to, which you tore up in Buchan's office.

Here the notary is requested to read to the witness the statement contained in the quoted part of the said question, which he here does.

Objected to by plaintiff on the same grounds as stated in objection to question No. 1244. Sustained, and exception saved by defendants.

The objections to questions 1244 to 1268, inclusive, were sustained on the ground that it appeared that the original affidavit signed by Brown was in existence and in possession of defendants' counsel, and that therefore it should have been produced and shown to the witness, and that the copy in the deposition could not now be read to the jury whilst the original was at hand and capable of production; to which ruling the defendants excepted, and thereupon de-

fendants' counsel for the present withdrew said questions and answers, with leave to again offer same. On the day following defendants' counsel offered to read said copy of said affidavit and the questions and answers based thereon to the jury; but the court held that the same could not be read unless the defendants produced the original affidavit; to which ruling the defendants duly excepted.

274 Be it further remembered that subsequently the original affidavit was produced by defendants' counsel and read in evidence to the jury.

Be it further remembered that thereupon the plaintiff, to further sustain the issues on her part, then produced as a witness Dr. N. Simmons, who, being first duly sworn, testified, among other things, as follows:

Dr. SIMMONS, a witness for the complainant.

Direct examination—questions by Mr. HUTCHINGS:

Q. Where do you reside?

A. In Lawrence, Kansas.

Q. How long have you resided in Lawrence?

A. I have resided in Lawrence and vicinity for nearly 20 years—since 1868.

Q. What is your occupation?

A. Practicing medicine.

Q. How long have you been practicing medicine?

A. Nearly 35 years.

Q. How long have you been practicing medicine in Lawrence, Kansas?

A. Since 1868.

Q. Were you acquainted with John W. Hillmon in his lifetime?

A. Yes, sir.

Q. When did you first become acquainted with him?

A. I think it was in 1872.

Q. Where?

A. In 1872 or 1873. I think it was in the winter, perhaps, of 1872, or possibly after, in the early part of 1873; I am not positive; it was about that time.

Q. Where was that?

275 A. That was in Jefferson county, just across the line from Douglas county.

Q. State if at that time you were residing in Jefferson county.

A. Yes, sir.

Q. On your farm?

A. Yes, sir.

Q. You have a farm there?

A. Yes, sir.

Q. How did you become acquainted with him?

A. Mr. Hillmon was taking care of a lot of cattle in the vicinity of my place, and I had a large quantity of hay to sell.

Q. Did that acquaintance continue until the time when he was alleged to have been killed?

A. Well, I saw him occasionally during that time.

Q. State if you were ever employed by him in the capacity of a physician.

A. I can't give the exact date, but perhaps in the year 1872 he met with an accident and had quite an injury on his face. In handling cattle in some way he received it; I could not tell how. I do not remember exactly how he received it—either by the kick of an animal or being thrown against a fence. He received a wound on his nose—in the center of the nose, running down across the eye—about an inch and a half long; something near that.

Q. On which side of the nose?

A. On the left side.

Q. Did he come to you for treatment?

A. Yes, sir.

Q. About how far up the nose from the end, from the lower end, of it was that injury?

A. Well, I think it was about the middle of the nose.

276 Q. Did this injury leave any visible scar, according to your recollection?

A. I never noticed whether it did or not.

Picture marked Exhibit "C" shown witness and witness asked: Do you recognize that photograph as the picture of any party you have ever known?

Objected to by the defendants because it is incompetent, irrelevant, and immaterial. It is not shown that the picture is an original picture. It is not shown that the negative from which it was taken is the same as produced by the camera, without having been retouched or altered. It is incompetent to prove a photograph in that way. The authorities are that the artist who took the picture must be produced and show that he took the picture, and that it is a correct representation of the original of which it claims to be a picture. Objection overruled, and exception saved by each of the defendants.

A. Yes, sir.

Q. Of whom is that a picture?

Same objection. Overruled, and exception saved by each of defendants.

A. I think it is a picture of John W. Hillmon.

Photograph marked "Exhibit H" is shown witness and witness asked: Is that photograph last shown you a picture of any one you have ever known?

Same objection. Overruled, and exception saved by each of defendants.

A. Yes, sir.

Q. Of whom is that a picture?

Same objection. Overruled, and exception saved by each of the defendants.

A. I think it is a better picture than the other of John W.
277 Hillmon.

Two photographs endorsed on the back "O. P. S., March 2, 1888," shown witness and witness asked: Have you ever seen those photographs before?

A. Yes, sir.

Q. On the front-view picture I will call your attention to the mark on the nose. Will you please to state how the location of the mark on that nose corresponds with the position or location of the injury on the John W. Hillmon's nose which you treated?

Objected to as not being competent to prove it in that way. Let him state where the location was on the nose and where it is upon the photograph, and the jury can see just as well as this witness can tell. It is nothing that requires expert testimony.

Objection sustained.

Q. Are you able, from an observation of the picture in your hands, the front view of the dead man, to locate the point of injury to the nose which you were called upon to treat?

Objected to as incompetent. Overruled, and exception saved by defendants.

A. I think so.

Q. Is there any mark on the nose of the picture referred to which indicates the place of that injury?

Objected to as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants. Witness may state where the injury was on Hillmon's nose, and the photograph is the best evidence as to where the defect is located.

A. I see a defect on the nose that would indicate that there was an injury or deformity of some kind.

278 Q. State whether that defect is located on the nose in the place compared with the place where the injury on Hillmon's nose occurred.

Same objection. Overruled, and exception saved by defendants

A. Yes, sir; it is about the same point, I think, as near as could be located.

Q. Did you hear the testimony of Mr. Paddock—the deposition that was read on the trial this afternoon?

A. Yes, sir.

Q. What would be the probable result from a wound of the kind described by that witness, as to the immediate falling of the person injured?

Objected to as incompetent and irrelevant and immaterial. Sustained.

Redirect examination—questions by Mr. HUTCHINGS:

Pictures of the corpse shown witness and witness asked, What is your best judgment? What are these pictures of? Doctor, state to the jury what they are.

Objected to as incompetent and irrelevant and immaterial. Overruled, and exception saved by defendants. It is not shown that the photograph is an original picture or that it is a correct representation of the person whose picture was taken. It is not shown that the negative is the same as produced by the camera without retouching.

A. They seem to be the pictures of a corpse that is considerably decayed and so disfigured by decay——

Q. You stated that you might not say positively as to whether they were the pictures of any one that you ever knew. What is your best judgment in regard to the matter?

Same objection as to question last above objected to. Objection overruled, and exception taken by defendants.

279 A. I should not like to say they were a picture of anybody that I know.

Q. I do not ask you to say that. I ask, What is your best judgment, what is your best opinion, in regard to the matter?

Same objection. Overruled, and exception saved.

A. They may be the picture of Mr. Hillmon or they may not be. I could not say.

Q. Why are you not able to say or to express an opinion as to whose pictures those photographs are?

Objected to as incompetent, irrelevant, and immaterial. Overruled, and exception saved.

A. Simply because of the change in the natural appearance. There is no expression there that I can identify. The eyes are obliterated. That is why I cannot recognize them. The change is too extensive for my meager knowledge of him. If I had been much more intimately acquainted with him I might have done better in that line, probably.

Be it further remembered that thereupon the plaintiff, to further sustain the issues on her part, produced as a witness REUBEN BROWN, who, being first duly sworn, testified, among other things, as follows:

Direct examination:

Q. Were you acquainted with W. J. Buchan, an attorney of Wyandotte, in the year 1879?

A. Yes, sir.

Q. How long had you been acquainted with Mr. Buchan prior to that time?

A. As near as I can recollect, 15 or 20 years.

Q. Did you know John W. Hillmon in his lifetime?

A. No, sir.

280 Q. Had you ever seen him?

A. I only saw him once.

Q. Where was that?

A. That was on Main street, in Kansas City.

Q. When was that?

A. Well, I don't recollect what time of the year. I don't have any recollection what time of the year it was.

Q. Do you remember the circumstances of his alleged death in Barbour county, Kansas?

A. Well, yes, sir; I remember my brother telling me what had happened.

Q. Do you remember of hearing of an inquest that was held in Lawrence in which your brother was a witness?

A. Yes, sir.

Q. How soon after that did you see your brother, John H. Brown?

A. Well, it must have been a week or ten days afterwards; somewhere along about that.

Q. State where you saw him.

A. At my house.

Q. When did he come to your house?

A. I think it was about the last of March or first of April.

Q. How long did he remain at your house?

A. He staid there until the next day, in the afternoon, I think.

Q. Where did he start to from your house that afternoon?

A. I don't remember the place now. It was down on the Missouri river, where they were building a bridge.

Q. Did you see Mr. Buchan very soon after that?

A. Yes, sir.

281 Q. Where did you see him?

A. I saw him at his office, in Wyandotte.

Q. How came you to go to his office?

A. He wrote for me to come; that he wanted to see me.

Q. State what conversation you had with Mr. Buchan at that time, at his office.

Objected to by defendants as incompetent, irrelevant, and immaterial and hearsay. Overruled, and exception saved by defendants.

A. He told me—he asked me where my brother John was. I told him I didn't know. "Well," he says, "I want to know where he is; I want to see him;" and I told him that I didn't know, but that I could go and look for him.

Q. What was said about any trouble that he was in, if anything?

Objected to by defendants as incompetent, irrelevant, and immaterial and hearsay. Overruled, and exception saved by defendants.

A. Well, he said he had heard that he had got into trouble and he wanted to get him out of it; that he had been employed by my father and brother to get him out of this trouble, and he wanted I should hunt him up; and I told Buchan where he started to, and I said I would go down and hunt him up and bring him back, so he

could have a talk with him. That is about the substance of the conversation. That is about what was said at that time.

Q. Where did you go from Mr. Buchan's office?

A. I went from there, I think, right straight down to Orrick, Missouri. I think I left his office and went right down to Orrick. On the way to the place my brother told me he was going, too.

Q. Where is Orrick?

A. It is 15 or 20 miles below Kansas City.

282 Q. When did you next see Buchan after that?

A. The next I saw him was at my house.

Q. Who came there with him?

A. A fellow by the name of Ward.

Q. Who was Ward?

A. He was the deputy sheriff, I think, of Wyandotte county, or constable. I don't recollect whether he was constable or deputy sheriff.

Q. Where was your brother at that time?

A. He was hauling lumber or wood—I forget which it was—about half a mile from where I lived.

Q. About what time of day did Buchan and Ward arrive at your house?

A. About ten o'clock, I should judge, in the morning.

Q. State how Buchan—how did he come over?

A. He came over in a buggy.

Q. State what transpired after he came over.

A. He asked me where Brother John was, and I told him.

Q. What did you tell him?

A. I told him he was hauling lumber or wood—I forget which it is now—from the mill to the railroad depot.

Q. Then where did Buchan go?

A. They went up to the mill, about half a mile from our house.

Q. Did they return?

A. Yes, sir.

Q. When they got back to your house what did they do?

A. They put their teams up and went and got dinner.

Q. Did you ask them to dinner?

A. Yes, sir.

283 Q. Well, what was done between the time they put up their teams and dinner time?

A. Well, Buchan and John were out in the lot talking.

Q. After dinner was there any conversation between Mr. Buchan and your brother John?

A. Yes, sir.

Q. Where was that conversation had?

A. They went up in the orchard.

Q. Where did they go from the orchard?

A. They came back into the barn lot.

Q. Did you have any conversation with Buchan there?

A. Yes, sir.

Q. State what it was. What did he say to you and what did you say to him?

Objected to by defendants as incompetent, irrelevant, and immaterial and hearsay. Overruled, and exception saved by defendants.

A. Mr. Buchan said that John was very firm in this matter, and that he ought to do something; that he was liable to be arrested at any time, and that he was doing it for his own good, and that he didn't get anything for this work; that he wanted to get him out of trouble, and he wanted me to go and talk with him and tell him just how it was and get him to make a statement different from what he had made; that the deputy sheriff was there, and he didn't know, if John didn't do something, what might turn up. That was about the words.

Q. What did you say in reply to that?

Objected to by defendants as incompetent, irrelevant, and immaterial and hearsay. Overruled, and exception saved by defendants.

A. He said that he wanted to get John out of trouble. He
284 was doing it for his own good, and if he didn't make a different statement from what he had made he would put himself into trouble.

Redirect examination:

Q. When John left your house and rode away with your horse what did he go for?

Objected to as incompetent, irrelevant, and immaterial.

A. He went down to work.

Q. Can you remember the place he started for—the name of the place he started for?

A. Right now I can't. It is away below Orrick. They were building a bridge across the Missouri river. I don't know the name of it now.

Q. Was it Poachport?

A. Yes, sir; that was the name.

Defendants move to strike out what the witness said in regard to the purpose for which John H. Brown was going away. He states that all he knows about it is what he said. Motion granted.

Mr. BARKER: I desire to submit a motion to strike out all the witness' testimony in regard to all these conversations with Buchan and Brown. Motion overruled, and exception saved for each of the defendants.

Be it further remembered that thereupon the plaintiff, to further sustain the issues upon her part, next introduced and read by consent a copy of the testimony given at a former trial of these cases by Levi Baldwin as a witness, who, being duly sworn, testified at such former trial, among other things, as follows:

Direct examination:

Q. What relation are you to Mrs. Hillmon?

A. Second cousin.

Q. When did you last see John W. Hillmon alive?
285 A. In the spring of 1879.
Q. Where?
A. At Lawrence, Kansas.
Q. When and where did you next see him, and what condition was he in at that time?
A. I next saw him at Medicine Lodge.
Q. Well, go on.
A. Buried; he was in the cemetery.
Q. How came you to go to Medicine Lodge?
A. I went at the request of Mrs. Hillmon.
Q. For what purpose?
A. To ascertain about the condition and state of affairs and fetch his body to Lawrence.
Q. What did you do after you arrived at Medicine Lodge?

Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved.

A. I consulted the people and physicians in regard to taking the remains home.

Defendants move to strike out the answer of the witness, for the reason that the same is incompetent, irrelevant, and immaterial. Overruled, and exception saved.

Q. Go on and state what further you did.

Objected to as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. They thought it was not best at that time. I made preparations for fixing the grave.

Defendants move to strike out that portion of the answer, "They thought it was not best at that time," as not being responsive
286 to the question and as being incompetent and immaterial testimony. Overruled, and exception saved by defendants.

Be it further remembered that thereupon the plaintiff, to sustain the issues in her behalf, produced as a witness JOHN ELDRIDGE, who being duly sworn, testified in part as follows:

Direct examination—questions by Mr. HUTCHINGS:

Q. Where do you live?
A. Lawrence, Kansas.
Q. How long have you lived in the city of Lawrence?
A. About 15 years.
Q. What is your occupation?
A. I am in the livery business.
Q. How long have you been in the livery business?
A. Ten or eleven years.
Q. Were you acquainted with John W. Hillmon in his lifetime?
A. Yes, sir.

Q. When did you first become acquainted with him?
A. Well, I was acquainted with him before I went into the livery business—about a year or such a matter.
Q. During the time of your acquaintance with him, what business was Hillmon engaged in?
A. The first time I knew him he was herding cattle.
Q. What business was he subsequently engaged in?
A. Well, I only know of his buying hogs.
Q. Where did he have his headquarters?
A. Well, he was buying hogs at my place.
Q. When was that?
A. I have forgotten; it was just shortly after his marriage.
287 Q. What time of the year?
A. I think it was along in October.
Q. At about the time he was buying hogs at your stable at your place, you may state if you knew of his having any money.
A. I know of his having money just before he commenced buying hogs.
Q. State what you saw with regard to the money he had.

Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. I could not say how much. He had it in three or four packages, wrapped up in a newspaper; I could not say how much there was.
Q. Did you notice the denomination of the bills?

Same objection. Overruled, and exception saved by defendants.

A. I saw tens and I saw one or two fifties.
Q. How large a package was it that he had?

Same objection. Overruled, and exception saved by defendants.

A. Well, I could not say as I remember right. I think there was three packages, and out of one of the packages he took a ten-dollar bill and he gave it to me—he owed me eight dollars for livery hire—and I gave him his change back.
Q. State how thick the packages were.

Same objection. Overruled, and exception saved by defendants.

A. Well, I could not tell. I remember there were three packages; they were probably—I should think they were an inch thick, I should judge.
Q. Each one of them that thickness, you should judge?

Same objection. Overruled, and exception saved by defendants.

A. Yes, sir.

Be it further remembered that thereupon the plaintiff, to
288 further sustain the issues upon her part, testified in her own behalf, among other things, being first duly sworn, as follows—it being shown that A. L. Selig was the agent of the Connecticut

Mutual Life Ins. Co. to whom the policy sued on was sent for delivery:

Q. Are you acquainted with Mr. A. L. Selig, who resides in Lawrence?

A. Yes, sir.

Q. Did you go to Mr. Selig's office to see him at any time after your husband, John W. Hillmon, left the last time and before his death?

A. Yes, sir.

Q. How did you come to go to Mr. Selig's office?

A. He sent me a note to call at his office.

Q. About what time was that?

A. It was some time in March; from the 10th to along about the 15th of March.

Q. What time of the day did you go to his office?

A. I think it was in the afternoon.

Q. Did you have any conversation with him there at that time?

A. Yes, sir.

Q. In relation to what matter?

A. To a policy.

Q. In relation to one of the policies in this suit?

A. Yes, sir.

Q. Where was that policy?

A. He had it.

Q. In whose hands?

A. Mr. Selig.

Q. Now, then, what was said between you and Mr. Selig in relation to the policy?

289 Objected to on the ground that it is incompetent, irrelevant, and immaterial. Objection overruled, and exception saved by defendants.

A. I think it was the Connecticut Mutual.

Q. Was the policy in the hands of Mr. Selig at that time?

A. Yes, sir.

Q. From whom did you receive that policy?

A. Mr. Selig.

Q. At that time?

A. Yes, sir.

Defendants object to the last two questions as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

Q. What was said between you and Mr. Selig in relation to the policy at the time you obtained it?

Objected to by defendants on the ground that it calls for a conversation between them and because it is incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

Defendants also save special exception in behalf of the companies

for which there is no claim that he was the agent, and on behalf of all the companies.

A. I went to his office and he told me that the policy had come, and he offered it to me. I told him, No; that my husband had written me——

Q. Have you got that letter?

A. I think so.

Q. Go on and state what you told him.

Objected to on the same grounds as contained in objection last above. Objection overruled, and exception saved by defendants.

A. I told him my husband said I could call and get the money and not take the policies; that he would be home in a short time and he could not carry those policies, and Mr. Selig said that I had better take the policies, because if any accident should happen — him out in that wild country that I would have that much more
290 money, and if I should cancel it it would be only a small amount at the present time and it might be of great use by and by.

Q. What did you reply?

Objected to on the same grounds as contained in the objection last above. Objection overruled, and exception saved by the defendants.

A. I told him I would prefer the money, and he said no; I had better take his advice and keep the policy.

Q. What did he say about the premiums having been paid?

Same objection. Overruled, and exception saved by defendants.

A. He said it was all paid for.

Q. When you asked him to return the premium did he refuse to do so?

Objected to as incompetent, irrelevant, and immaterial and hearsay. Overruled, and exception saved by defendants.

A. Yes, sir. He insisted that I should take the policy.

Q. What did he say?

Objected to as incompetent and hearsay. Objection overruled, and exception saved by defendants.

A. He refused to give me the money and told me to take the policy.

Q. What did you do?

A. I took the policy.

Be it further remembered that, evidence touching the size of the foot of John W. Hillmon & also of the corpse having been introduced, thereupon the plaintiff, to further sustain the issues on her part, produced as a witness HENRY S. CLARK, who, being first duly sworn, testified in part as follows:

Q. Do you remember the time when the body of a person
291 alleged to have been John W. Hillmon was brought back from Medicine Lodge to Lawrence?

A. Yes, sir; I recollect it.
Q. Do you remember—did you see the dead body?
A. Yes, sir.
Q. Did you try on the boot that he wore—that was brought back?
A. I tried on a rubber boot that was in a trunk that was said to be his effects.
Q. How did that boot fit your foot?

Objected to as incompetent, irrelevant, and immaterial by defendants. Overruled, and exception saved by defendants.

A. That boot was too long for my foot.
Q. How much?

Same objection. Overruled, and exception saved by defendants.

A. I should think a size and a half; possibly two sizes.
Q. What size boot or shoe do you wear?

Objected to by defendants as incompetent, irrelevant, and immaterial. Objection overruled, and exception saved by defendants.

A. I wear a number 7.
Q. Mr. Clark, at that inquest you were sheriff then, you said?
A. Yes, sir.
Q. Did you serve any subpœna upon Mrs. Hillmon to produce any pictures upon that inquest?

Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. Yes, sir.
Q. Did you receive any pictures from Mrs. Hillmon, or were there any delivered there at that inquest?

Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. Yes, sir.
Q. Did you see among those pictures obtained from Mrs. Hillmon a tintype of John H. Brown and Mr. Hillmon together, standing?

292 Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. I did.
Q. When did you last see that picture?

Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. The last I saw of that I handed it to the county attorney, Mr. Green.
Q. Mr. Green here, counsel for the defendants?
A. Yes, sir.
Q. Where was that?

Objected to by defendants as incompetent, irrelevant, and immaterial. —, by defendants.

A. It was in the court-room where the inquest was being carried on.

Be it further remembered that, plaintiff having rested her case, thereupon the defendants, to support the issues in their behalf, introduced evidence tending to show that the body found by the campfire on Crooked creek on the evening of March 18th, 1879, was not the body of John W. Hillmon; also evidence tending to impeach the credibility of John H. Brown; also evidence tending to identify the body found in the camp on Crooked creek as being that of one Frederick Adolph Walters. Defendants also introduced testimony touching the pecuniary standing and ability of John W. Hillmon at the date of the procuring the insurance upon his life. Defendants also introduced in evidence the several releases signed by plaintiff and pleaded by defendants; also evidence tending to show when, where, and under what circumstances plaintiff signed the same.

Be it further remembered that A. L. Selig, being called as
293 a witness by the defendants, testified, among other things, that he was present in Dr. Stuart's office when John W. Hillmon was measured by Dr. Stuart, as testified to by the latter; that Hillmon stood up by the door casing, something was placed over his head, and measurement taken either with a rule or tape-line; that the witness Selig did not hold the rule or tape-line, but saw Dr. Stewart make the measurement; that he looked at the measure, but could not tell what the height of Hillmon was without being told by the person making the measurement; that the knowledge that he had as to the height of Hillmon was derived from what Dr. Stuart stated at the time of the measurement.

Thereupon plaintiff moves to strike out the witness' statement that Hillmon was five feet nine inches high as not being within his own knowledge. Motion sustained, and duly excepted to by defendants.

And, being further interrogated, testified as follows:

Q. They proved by you the other day that you were an insurance agent. I will ask you if it is the practice or the custom of insurance men for people to solicit insurance, or is it the other way? Do companies or their agents usually solicit parties to become insured?

A. We generally—our work consists in soliciting the insurance.

Q. State whether or not it is a usual thing for a man to go into the office and apply for insurance without being solicited by any one.

—. No, sir; it is rather unusual.

Q. You may state whether or not twenty-five thousand dollars is a usual or unusual amount of insurance for one person to have, taking into consideration your experience as an agent.

Objected to as irrelevant and immaterial. Sustained, and exception saved.

Q. How long have you been engaged in the life-insurance business?

294 A. Fifteen years.

—. State whether or not you have the means of knowing

to a considerable extent the amount of insurance usually carried by people.

A. Approximately only.

Q. Has that knowledge been derived from the business you have carried on?

A. Yes, sir.

Q. State whether or not you have taken considerable, many applications during that fifteen years.

A. Yes, sir.

Q. State whether or not it has been largely from the vicinity of Lawrence and in that vicinity.

A. Yes, sir.

Q. And been confined entirely to the State of Kansas?

A. Yes, sir.

Q. Now you may state if you ever knew of a party worth three to four thousand dollars carrying twenty-five thousand dollars life insurance.

Objected to as immaterial and irrelevant. Sustained, and exception saved.

Q. You may state whether or not twenty-five thousand dollars would be an ordinary or an exceedingly large amount of insurance for a person in those circumstances to carry, so far as your experience is concerned.

Objected to as immaterial and irrelevant. Sustained, and exception saved.

Be it further remembered that there was evidence tending to show that when the policies were issued the companies knew the amount of insurance applied for by Hillmon.

295 Be it further remembered that the defendants next offered the testimony of Mrs. G. A. Nichols, taken at Leavenworth, Kansas, in 1885, upon a former trial *for* the cause and by consent read as her deposition in this trial. Contained in said deposition was the question, "Do you know anything in regard to the scar on his hand?" "Well, I didn't see the scar that I remember of, but I heard him and my husband talking about it while I was getting supper in the evening, but I didn't notice it."

Thereupon plaintiff moves to strike out the answer of the witness as incompetent, irrelevant, and hearsay. Motion sustained; to which ruling the defendants duly excepted.

Be it further remembered that in the same deposition the following question was put to the witness, it appearing that she was a sister of John W. Hillmon and had testified that John W. Hillmon had lost a front tooth:

Q. "Now, in regard to the other members of the family—how about their teeth?"

Which question was objected to as being incompetent and irrelevant. Objection sustained, and the defendants at the time duly excepted.

Also the question, "Have you bad teeth?"

Objected to as incompetent and irrelevant. Question sustained, and the defendants duly excepted.

Also the question, "Did you and your brother, John W. Hillmon, have any conversation concerning teeth at that time?"

Objected to by plaintiff as being incompetent, immaterial, and irrelevant. Said objection was by the court sustained; to which ruling the defendants duly excepted.

Be it further remembered that the defendants next pro-
296 duced as a witness W. J. Buchan, who testified in part as follows:

That he was a lawyer; was acquainted with John H. Brown, his father and brothers; that in the latter part of March or first of April, 1879, John H. Brown's father told him that John was in trouble at Lawrence; he wanted him to look after him; that witness further testified that he had two interviews with John H. Brown—the first being in the latter part of April, 1879, or possibly the first of May, this interview being at Lexington; that at that interview John H. Brown detailed to him what he claimed were the facts in regard to his and Hillmon's trip through Southern Kansas, the same being substantially what was afterwards put in writing; that he saw John H. Brown again a month or more afterwards—possibly in June or July—at Parkville, Missouri; that the witness went down to see Brown, in pursuance of a conversation had with one of the attorneys for the defendants, for the purpose of ascertaining what Brown's intentions were; that he again saw Brown about the 4th of September, 1879, in the neighborhood of Parkville, Missouri; that it was at this interview that the written affidavit, signed by John H. Brown, dated 4th of September, 1879, was made out and signed by Brown.

Witness testified further to conversations had at these several interviews with John H. Brown and to the circumstances leading to the execution of the written affidavit of September 4th, his testimony tending to show that Brown made the statements concerning the transactions set forth in the written affidavit voluntarily, and for the purpose of escaping trouble on his part, and to prevent being prosecuted at the instance of the insurance companies.

Witness testified further that he subsequently met Mrs. Hillmon at Leavenworth, Kansas; that the following questions and
297 answers are part of his testimony:

Q. State what took place between you and her in reference to the signing of these releases.

A. I had but very little talk with Mrs. Hillmon up to that time about it. We went to the Planters' House and got a room there, but I can't recollect the talk. She was willing to do what she was doing; was willing to sign these papers. She and John did most of the talking.

Q. State whether you urged her to sign the releases or not.

A. No, sir. She came there for the purpose of signing these releases. Her mind was fully made up to sign them.

On motion of plaintiff the court struck out all of this answer except the words "no, sir," to which the defendants duly excepted.

Q. I will ask you if you stated to her that she could never recover in the cases, and that this would always be a cloud upon her character and reputation.

A. No, sir. There was no such talk as that at all.

Q. What did you say, if anything, about your having taken away her main witness?

A. I never said anything about it. There was no conversation of that kind at all. There was no conversation between her and myself or Brown and myself as to the policy of this or as to the reason for it. She came there to sign those papers, she said, whatever papers were wanted to get these policies, and she wanted John—rather insisted on John's going with her down to Wheat's office to get those policies; but John didn't seem to want to do it, and she and I went. There was no argument nor no talk as to why she should sign those papers.

Q. Look at these releases—they are marked—and state where they were signed.

298 A. They were signed at Leavenworth.

Q. By Mrs. Hillmon?

A. Yes, sir.

On cross-examination witness testified that on one of the occasions when he went to Missouri to try and see John H. Brown Samuel Walker was along; that Walker wished to see Brown, and witness, at the request of Brown's father, went along as a sort of guarantee that Walker would not arrest Brown nor make any attempt to do so; and thereupon, in further cross-examination, the following question was asked the witness:

"You could not prevent Walker arresting him if he wanted to?

"A. I don't know."

Defendants objected to this question and answer; which objection was overruled, and defendants excepted.

Be it further remembered that, further to sustain the issues upon their part, the defendants next produced as a witness Dr. V. G. MILLER, who, being first duly sworn, testified, among other things, as follows:

Q. You may state, Doctor, if you know the height of John W. Hillmon.

A. I do now. I did not then.

Q. How did you arrive at it?

A. John W. Hillmon came to my office and said he had made a mistake——

Q. How did you arrive at that height?

A. I had a measure on the door or window.

Q. Did you measure him?

A. Yes, sir. He made the statement, and I made a note of it.

Q. Who was present there at that time?

A. I don't know whether there was any one or not; I don't recollect.

299 Q. Mr. Hillmon was there, wasn't he?

A. Yes, sir.

Q. State whether or not you made it in the presence of Hillmon.

A. Yes, sir; I did.

Q. Have you your book?

A. I have the book here in which I made the memorandum.

Q. Under what circumstances did you make that memorandum there?

A. He came to my office and said he had made a mistake as to his height——

Mr. RIGGS: We object to that statement and move to strike it out, Sustained, and exception saved by the defendants.

WITNESS: I had a grade of feet and inches on the window or door and I had him stand up there, and I don't know whether I had a pencil or some substance or a book, something of that kind, in my hand, and I ran it over his head, and then I took it direct from the measurement.

Q. What did he measure at that time?

A. Five feet and nine inches.

Q. Look at the date commencing "Lawrence, Kansas," on page 328 of that book now shown you, and state whose handwriting that is in.

A. That is my handwriting.

Q. When did you make that?

A. I made it as dated here, December 17th, 1878.

Q. When, in reference to the time of measuring John W. Hillmon?

A. This was the time that I measured him, and it was made in his presence and read to him.

Q. Now, you may state what that is.

Objected to as incompetent. Sustained, and exception saved by defendants.

300 Q. Look at the book now shown you, marked Exhibit No. 23, at page 328 thereof, and state if at the time you measured John W. Hillmon you made an entry thereof, in that book and upon that page, of the fact.

Question withdrawn and witness asked: State if at the time you made that measurement you made a written memorandum of it. And, if so, what is that statement?

A. I may state that Hillmon called upon me and said that *he* had been a mistake made, and I have just made an effort, and I took his measurement, and I made an entry of the same, and I made it in this book and made it at this time.

By COURT: On what page?

A. On page 328.

WITNESS: I made it in the presence of John W. Hillmon.

Q. Did you make a memorandum of his height?
A. Yes, sir.
—. Did you read that memorandum to John W. Hillmon?
A. Yes, sir; I did.
Q. Did he make any objections?
A. None at all.
Q. At whose request was this memorandum made?

Objected to as calling for incompetent evidence, and because it is of and concerning matters of which oral evidence has been given, of a conversation that occurred and of a statement made in writing. Sustained, and exception saved by defendants.

Mr. BARKER: We will now offer that portion of page 328 in evidence of Exhibit 23 as commencing with the word "Lawrence" and ends with the word "Miller."

Objected to as incompetent and hearsay, and because they have already given oral evidence of its contents. Sustained, and
301 exception taken by defendants.

Copy of Entry Made by Dr. Miller in His Day Book.

LAWRENCE, KANSAS, *December* 17, 1878.

John W. Hillmon called upon me and reported a slight mistake in his height. He, Hillmon, is five feet nine inches in place of five feet eleven inches, as stated in his policy for life insurance in the New York Mutual.

(Signed) V. G. MILLER.

Q. At the time you measured John W. Hillmon there in your office did he remove his boots?
A. No, sir.

Be it further remembered that thereupon, to further sustain the issues on their part, the defendants produced E. B. GOOD, who, being first duly sworn and examined, testified in part as follows:

Q. State your name and where you reside.
A. E. B. Good; Lawrence, Kansas.
Q. How long have you resided in Lawrence?
A. About 22 years.
Q. In what business are you engaged now?
A. Grocery.
Q. State if you remember the fact of a dead body being brought to Lawrence about the 1st of April, 1879, which was at the undertaking establishment of Bailey & Smith, and on which an inquest was held.
A. Yes, sir.
Q. Do you remember of visiting Bailey & Smith's place as a juryman?
A. Yes, sir.

Q. You may state what her conduct was on that occasion,
302 whether it was serious or—just state the facts in reference to that matter.

Objected to as incompetent and immaterial. Objection sustained, and the defendants then and there duly excepted thereto.

Q. I don't ask what she said. I will ask you in regard to her manner of talking with the attorneys and the examining parties in regard to that.

Objected to as incompetent and immaterial. Objection sustained; to which ruling the defendants then and there duly excepted.

Q. State on that occasion what exhibitions of grief, if any, she made.

Objected to as incompetent and immaterial. Objection sustained; to which ruling the defendants then and there duly excepted.

Be it further remembered that thereupon, to sustain the issues in their behalf, the defendants introduced Dr. J. H. STEWART, who, being duly sworn, testified in part as follows:

Q. You may state, if you know, the height of John W. Hillmon.
A. Yes, sir.
Q. State how you came to know that height?
A. By measurement.
Q. How did you measure him there?
A. I measured him by a scale I had on the door in the office.
Q. How did you come to measure him?

Objected to by plaintiff as immaterial and incompetent. Objection sustained, and defendants duly excepted.

Be it further remembered that thereupon, to further sustain the issues upon their part, the defendants next produced as a witness C. R. WALTERS, who, being first duly sworn, testified, among
303 other things, as follows:

That he resided at Rich Hill, Missouri; was a brother of Frederick Adolph Walters; that his father's family resided for many years at Fort Madison, Iowa; that he last saw his brother Frederick Adolph at Holden, Missouri. He thinks it was in the year 1878. Witness testified that he corresponded frequently with his brother, and that since 1879 he had received no letters from his brother. Witness further testified that he had seen the photographs of the body at St. Louis, they having been sent to him by his father.

Witness further testified that his relations with his brother were of the friendliest character, and that the same was true of the relations between his brother and the remainder of his family.

Further testified that since receiving these pictures at St. Louis, which, as he remembers, was in 1879, he has regarded his brother Adolph as dead.

Thereupon this further question was put to the witness:

"Now you may state, if you know, how the other members of the

family—your father, mother, and sisters—have regarded your brother Frederick Adolph; whether they have regarded him as being dead since they received those photographs."

Objected to as incompetent, irrelevant, and hearsay. Objection sustained, and the defendants then and there duly excepted.

Witness gave further testimony describing the size, build, appearance, and characteristics of his brother Frederick Adolph.

Witness further testified that he had received a letter from his brother Frederick Adolph written from Wichita, Kansas; that it was the last letter that he had ever received from him; that he had made diligent search for the letter and was unable to find it, and was satisfied that the letter was lost; that he remembered the
304 contents of the letter in question.

Thereupon defendants' counsel offered to prove by the witness the contents of the said letter; to which plaintiff objected as being incompetent, irrelevant, and hearsay. Objection sustained; to which the defendants duly excepted.

On further examination this question was asked the witness:

"Is it not a fact, Mr. Walters, that in 1880 you had no knowledge that your brother had been west of this city (Topeka); that in 1880 you stated in your letter—in one of your letters—that you understood that he died near the city of Topeka?"

Objected to as incompetent, irrelevant, and immaterial. Objection overruled; to which the defendants duly excepted.

A. Well, in 1880 I didn't know the location of Topeka. I didn't know whether Topeka was 400 miles from Kansas City or 40 miles.

Q. The question I am asking now is if it was not your understanding in 1880 that the last you had heard of your brother was from the vicinity of Topeka. Didn't you so understand?

Objected to by defendants. Objection overruled; to which ruling the defendants duly excepted.

A. I don't remember what I understood at that time.

And, being further interrogated, testified as follows:

Q. I wish you would refer to this letter that I showed you here in your handwriting and refresh your recollection.

A. Well, I don't remember. I could not say that he had or had not.

Q. At the time you wrote this letter it was your belief and impression that he had a few fillings in his teeth?

A. I don't know.

Q. You wrote that letter?

305 A. Yes; but I don't think there is anything definite in that letter one way or another. I had no knowledge of his having any filling done or of his not having any. I was merely saying that as my explanation of your previous question.

Witness is handed the letter referred to and asked:

Is that your signature to that letter?

A. Yes, sir; I think it is.

Q. I wish to ask the question. You may state if, in the letter shown you, dated May 22nd, 1880, you did not say——

Objected to by defendants as incompetent, irrelevant, and immaterial, the letter being the best evidence. Objection overruled, and exception saved by defendants.

Q. In that paragraph did you not say: "As regards your other questions, will say my brother, I think, had some dentistry performed on his teeth—a few fillings, perhaps. He also had a high instep and corns on his feet, though I cannot give a more positive description than the one already sent you, aside from this, as my brother and I were only a few times together in the past ten years."

Q. The question is, Did you write or say that in this letter?

Objected to by defendants as incompetent and immaterial. The letter is the best evidence. Objection overruled and exception saved by defendants.

A. I presume I did, if you read it correctly.

Q. Did you not also say in that letter: "He visited me for a week or so, then went to Paola, Kansas, where he remained for a short time; after that he went to Topeka, and in the spring of 1879, towards Lawrence. I received but few letters from him, as he never wrote often."

306 Objected to by defendants as incompetent and immaterial evidence. The letter is the best evidence. Objection overruled and exception taken by defendants.

A. Yes, sir.

Also as follows:

Q. I will ask you to state—look at this portion of the letter to which your attention has been called by the counsel for plaintiff, commencing there——

Question about to be asked by plaintiff is objected to as incompetent, irrelevant, and immaterial. Sustained, and exception saved by defendants.

Mr. BARKER: Then I desire to offer the portion of this letter, it being the same letter to which your attention has been called by the counsel for plaintiff, and in reference to which you were asked questions, commencing with the words "You could gain nothing" and ending with the words "over the sad affair," on page two of the letter; and in the same connection will offer in evidence—I will ask the witness if at the same time he did not write the following words, commencing with the words "my mother" and ending with the words "deranged over the sad affair."

Objected to by plaintiff as hearsay, irrelevant, and incompetent. Objection sustained and exception saved by defendants.

(Here follows the portion of the letter offered in evidence:)

"You would gain nothing yourself by going to Iowa, as I can and will give you all information in our possession regarding this affair; besides, your going there would be distasteful to my folks, as they are deeply mourning the dead man at Lawrence as their relative, particularly my mother, who is now almost deranged over the sad affair."

Mr. BARKER: I desire to offer in evidence the portion in-
307 cluded in the two brackets there.

Objected to by plaintiff as incompetent, irrelevant, and hearsay. Sustained, and exception saved by defendants.

Here follows the portion of the letter offered in evidence, as follows:

"If there is any doubt of the dead man being my brother, of course the sooner I know it the better; also for all concerned. I have no sympathy for the insurance companies you mention whatever, for they have no interest—at least, but their own—and, of course, no thought of justice in the matter if they really believe the man in question to have been murdered as supposed."

Witness is shown picture of the cadaver and asked: From the time you first saw those pictures in St. Louis, or those similar to that, up to the present time, have you ever entertained any doubt about their being the picture of your dead brother?

A. I never had any doubt.

Q. Have you any doubt now?

A. No, sir.

Be it further remembered that the defendants, to further maintain the issues in their behalf, introduced as a witness Mrs. ELIZABETH RIEFFENACH, who, being duly sworn, testified in part as follows:

Witness testified that she was a sister of Frederick Adolph Walters, living at Fort Madison, Iowa.

The following questions, among others, *was* put to said witness:

Q. Now you may state if you know how the other members of the family—your father, mother, and sisters—have regarded your brother Frederick Adolph—whether they have regarded him as living or dead—since they have received those pictures.

308 Objected to as incompetent, irrelevant, and hearsay. Objection sustained; to which the defendants duly excepted.

Q. You may state how your father regarded this matter after he received this picture—whether he regarded him as dead or living.

Same objection as before. Objection sustained; to which the defendants duly excepted.

Witness further testified that she had received a letter written from Wichita, Kansas, about the 4th or 5th day of March, 1879, by her brother Frederick Adolph; that the letter was dated at Wichita, and was in the handwriting of her brother. She had searched for

the letter but could not find the same, it being lost; that she remembered and could state the contents of the letter.

Thereupon defendants' counsel asked the question—

Q. State the contents of that letter.

To which plaintiffs objected on the ground that the same is incompetent, irrelevant, and hearsay. The objection was sustained, and the defendants duly excepted.

The following is the letter as stated by witness:

WICHITA, KANSAS,
March 4th or 5th or 3rd or 4th—I don't know—1879.

DEAR SISTER AND ALL: I now in my usual style drop you a few lines to let you know that I expect to leave Wichita on or about March the 5th, with a certain Mr. Hillmon, a sheep-trader, for Colorado or parts unknown to me. I expect to see the country now. News are of no interest to you, as you are not acquainted here. I will close with compliments to all inquiring friends. Love to all.

I am truly your brother,

FRED. ADOLPH WALTERS.

309 Be it further remembered that defendants introduced as a witness Alvina D. Kasten, who testified that she was twenty-one years of age and resided in Fort Madison, Iowa; was well acquainted with Frederick Adolph Walters; that she was engaged to be married to him; that she last saw him on the 24th of March, 1878, at Fort Madison; he left there at that time and has not returned; that she corresponded regularly with him; received a letter about every two weeks until the 3rd day of March, 1879, which was the last time she received a letter from him; that this letter was dated at Wichita, Kansas, March 1st, 1879, and was addressed to witness at Fort Madison, Iowa, and the envelope was postmarked "Wichita, Kansas, March 2nd, 1879;" that she had never heard from or seen Frederick Adolph since that time.

Thereupon defendants introduced in evidence the envelope containing said letter, with the postmark thereon, "Wichita, Mar. 2nd;" addressed, "Miss Alvina Kasten, Fort Madison, Iowa, Lee county."

Thereupon defendants offered to read in evidence the said letter written by Frederick Walters to Miss Kasten. Plaintiff objected to the reading of the same; which objection the court sustained, and the defendants at the time duly excepted.

The letter so offered to be read in evidence and ruled out by the court is as follows:

WICHITA, *Mar. 1st*, 1879.

DEAREST ALVINA: Your kind and ever-welcome letter was received yesterday afternoon, about an hour before I left Emporia. I will stay here until the fore part of next week, and then will leave here to see a part of the country that I never expected to see when

I left home, as I am going with a man by the name of Hill-
310 mon, who intends to start a sheep ranch, and as he promised me more wages than I could make at anything else I concluded to take it, for awhile at least, until I strike something better. There is so many folks in this country that have got the Leadville fever, and if I could not of got the situation that I have now I would have went there myself; but as it is at present I get to see the best portion of Kansas, Indian Territory, Colorado, and Mexico. The route that we intend to take would cost a man to travel from $150 to $200, but it will not cost me a cent; besides, I get good wages. I will drop you a letter occasionally until I get settled down; then I want you to answer it (you bet, honey)—don't it? So you can see that I will not get home for a few months yet, but cannot tell how soon I will get back. I am about as anxious to see you as you are to see me, but I do not want to get back there without a cent of money, for that is what I left for (you know).

When I get back you will get to see me in about the way we parted (you bet). If any one asks you what I am doing, tell them that you were not informed, for it is none of their business, and, another thing, don't ask me to write long letters, for I would without being told if I could find the words when I write, as I am generally busy when I receive a letter from my (old woman) sweet little girl. But you know that without being told, so I will not waste any more paper on that subject (at present). I will have to come to a close before long or I will have to do as that other fellow—write two sheets and swindle the p'master out of three cents, and you know I don't like to do that (pet). Please give compliments to enquiring friends and all the love that you can embrace for yourself and nobody else. I will close for this time, love, to let you hear from me soon again.

Yours as ever, F. A. WALTER.

310½ Be it further remembered that the defendants called as witnesses Col. Bradley, Judges Horton, Valentine, Johnston, and Humphrey, and, having shown that said witnesses were acquainted with W. J. Buchan, the defendants asked each of the said parties the question:

"State the reputation for professional integrity and standing of said W. J. Buchan."

Which question was objected to by plaintiff as incompetent and irrelevant. Objection sustained; to which the defendants duly excepted.

And thereupon the said defendants and each of them prayed that this their bill of exceptions in their behalf might be allowed, which is accordingly done, and upon their motion is signed and ordered to be made a part of the record in this case this 28th day of June, 1888.

O. P. SHIRAS, *Judge.*

Endorsed: Nos. 3147, 3148, 3149. Bill of exceptions. Filed June 28, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

311 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 4th day of June, A. D. 1888, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 3149.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

MONDAY, *Aug.* 6, 1888.

The above-named causes, heretofore consolidated for the purposes of trial and tried *to* the court and jury as one cause, beginning Feb'y 29, 1888, now coming up for hearing upon the motion for new trial filed on behalf of the said defendants, and the plaintiff and the several defendants appearing by their respective counsel, the said motion for new trial was duly argued & submitted to the court, and, having been duly considered, the same is overruled; to which ruling the defendants and each of them duly excepted; and thereupon it is ordered and adjudged that plaintiff have judgment against each defendant upon the verdict rendered against each defendant by the jury, the judgment to be entered against each defendant for the amount of the verdict, with interest from the date of the ren-
312 dition of the verdict, each entry to show exceptions thereto by defendant therein; and thereupon, in pursuance to the previous order of court, the bill of exceptions tendered by and on behalf of the said defendants and each of them was submitted for examination & settlement, and the same, having been duly examined and corrected, was settled and allowed and ordered to be filed by the clerk as of the date of June 28th, 1888.

June 28, 1888.

O. P. SHIRAS, *Judge.*

312½ SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

MONDAY, *Aug.* 6, 1888.

This day this cause coming up for hearing upon plaintiff's motion for judgment, and it appearing that on the 21st day of March, 1888, a verdict for plaintiff had been rendered in said cause awarding damages against the defendant in the sum of fifteen thousand and sixty dollars, and that by order of the court and the consent of the

parties the hearing upon the motion for new trial filed by defendant had been fixed for June 28th, 1888, and that upon that day the parties had duly appeared before the court and presented said motion for new trial, and that said motion, after consideration, had been overruled and judgment ordered to be entered upon the verdict in favor of plaintiff—

It is therefore ordered and adjudged that the plaintiff herein, Sallie E. Hillmon, have & recover judgment against the defendant, The New York Life Insurance Company, for the sum of fifteen thousand and sixty dollars ($15,060.00), with interest thereon from the 21st day of March, A. D. 1888, and for her costs in this behalf expended, taxed at —, and that she have execution therefor; to which rulings, orders, and judgment the defendant duly excepts.

313 In the Supreme Court of the United States.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Plaintiff in Error,
vs.
SALLIE E. HILLMON, Defendant in Error.

THE NEW YORK LIFE INSURANCE COMPANY, Plaintiff in Error,
vs.
SALLIE E. HILLMON, Defendant in Error.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Plaintiff in Error,
vs.
SALLIE E. HILLMON, Defendant in Error.

Consolidated Case.

Petition in Error.

The said plaintiffs in error, The Mutual Life Insurance Company of New York, The New York Life Insurance Company, and The Connecticut Mutual Life Insurance Company, complain that heretofore the said defendant in error, Sallie E. Hillmon, duly
314 commenced in the circuit court of the United States for the district of Kansas her separate suit against each of the plaintiffs upon the several insurance policies which they issued upon the life of John W. Hillmon; that thereafter, by the order of said court and against the objections of each of said plaintiffs in error, said separate actions were consolidated and were tried together, and for that reason said plaintiffs in error are joined in this petition in error.

The said plaintiffs in error further complain of the said defendant in error that the said defendant in error, at the June term of the circuit court of the United States for the district of Kansas, A. D. 1888, recovered a judgment against each of said plaintiffs in error by the consideration of said court in the consolidated action then pending in said court, wherein the said defendant in error was plaintiff and the said plaintiffs in error were defendants.

A copy of the record of the judgment and proceedings in each case, duly certified, is attached hereunto, marked "A," and made a

part of this petition; and each of said plaintiffs in error aver that there is error in the said records and proceedings, in this, to wit:

1. That the said court erred in making its order consolidating said causes for trial over the objection of each of said plaintiffs in error.

2. That the said court erred in overruling the motion and application of each of said plaintiffs in error, filed in this cause, asking said court to vacate and set aside its said order consolidating said causes for trial.

3. That the said court erred, in the impanelling of the jury in said cause, in refusing to allow each of the plaintiffs in error three
315 peremptory challenges of jurors and in holding and limiting all the said plaintiffs in error to three peremptory challenges only, which was duly excepted to at the time by each of said plaintiffs in error.

4. That the said court erred in admitting the evidence of the witness, John Brown, produced on behalf of the defendant in error, to the following question:

What was the purpose of that trip?

5. That the said court erred in sustaining the objection of said defendant in error to the question asked of the said witness, John Brown, on his cross-examination, as follows:

On the 5th day of April, A. D. 1879, in the office of George J. Barker, in Lawrence, Kansas, were you not shown a postal card from Griffin, Texas, directed to Mr. Brocklesby, city marshal of Lawrence, inquiring if a man by the name of Hillmon lived in Lawrence, and stating in substance that he had a difficulty with a train of cattle; also stating that Hillmon formerly lived near Grasshopper; and if you were not asked if Hillmon was ever at Griffin, Texas, and if in reply thereto you did not state that Hillmon had been at Griffin, Texas, and that you was with him there.

6. That the said court erred in sustaining the objection of defendant in error to question # 1244, asked of said witness, John Brown, on his cross-examination, beginning as follows:

State if the following is the statement made and prepared on the 4th day of September, 1879, at your brother's residence, situated near Parkville, Missouri.

7. That the said court erred in sustaining the objection of defendant in error to the question asked of the said witness, John Brown, on his cross-examination, as follows:

316 Did you not sign this statement in the presence of and swear to it before Francis M. McDonald, at his office, in Parkville, Missouri, on the 4th day of September, 1879?

8. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

Did you or did you not sign this statement in the presence of and swear to it before Francis M. McDonald, at his office, in Parkville, Missouri, on the 4th day of September, 1879, or at any other time?

9. That the court erred in sustaining the objection of defendant

in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

Did you sign this statement in the presence of Francis M. McDonald and W. J. Buchan, at the office of McDonald, at Parkville, Missouri, on the 4th day of September, 1879, or at any other time?

10. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

Did not this statement, the statement referred to in question No. 1244, have attached to it the following words at the time you tore it up and put it in the stove at Buchan's office: "Subscribed in my presence and sworn to before me this 4th day of September, A. D. 1879. My term expires on the 2nd day of April, 1883.—Francis M. McDonald, notary public."

11. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

317 Did not this statement that you tore up and put in the stove at Buchan's office, in the presence of Buchan and Mrs. Hillmon, have attached to it the words quoted in question No. 1253?

12. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

Did this statement that you tore up and put in the stove at Buchan's office, in the presence of Mrs. Hillmon, have the impression of a seal of any kind on it?

13. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

Does question No. 1244 of this deposition contain a correct statement of the contents of the paper or statement written by Buchan in your brother's house at Parkville, Missouri, on or about the 4th day of September, 1879, which was present on the same day in the office of Francis M. McDonald, in Parkville, Platte county, Missouri, at the same time you and J. W. Buchan were there, which paper or statement you afterwards tore up and threw into the stove, in the office of said Buchan, in the city of Wyandotte, Kansas? If not, state wherein the statement contained in said question differs from the statement above referred to, which you tore up in Buchan's office. (Here the notary is requested to read to the witness the statement contained in the quoted part of the said question, which he here does.)

14. That the said court erred in admitting the evidence of the witness, Dr. Simmons, produced on behalf of the defendant in error, to the following question:

318 Picture marked "Exhibit C" shown witness and witness asked: Do you recognize that photograph as the picture of any party you have ever known?

15. That the said court erred in admitting the evidence of the witness, Dr. Simmons, produced on behalf of the defendant in error, to the following question:

Of whom is that a picture?

16. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Photograph marked "Exhibit H" is shown witness and witness asked; Is that photograph last shown you a picture of any one you have ever known?

17. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Of whom is that a picture?

18. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Are you able from an observation of the picture in your hands, the front view of the dead man, to locate the point of injury to the nose which you were called upon to treat?

19. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Is there any mark on the nose of the picture referred to which indicates the place of that injury?

20. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

State whether the defect is located on the nose in the place
319 compared with the place where the injury on Hillmon's nose occurred.

21. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Pictures of the corpse shown witness and witness asked: What is your best judgment—what are these pictures of? Doctor, state to the jury what they are.

22. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

You stated that you might not say positively as to whether they were the pictures of any one that you ever knew. What is your best judgment in regard to the matter?

23. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

I do not ask you to say that; I ask what is your best judgment, what is your best opinion, in regard to the matter?

24. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Why are you not able to say or to express an opinion as to whose pictures these photographs are?

25. That the said court erred in admitting the evidence of the witness, Reuben Brown, produced on behalf of the defendant in error, to the following question:

State what conversation you had with Mr. Buchan at that time at his office.

26. That the said court erred in admitting the evidence of the witness, Reuben Brown, to the following question:

What was said about any trouble that he was in, if anything?

27. That the said court erred in admitting the evidence of
320 the witness, Reuben Brown, to the following question:

State what it was. What did he say to you and what did you say to him?

28. That the said court erred in admitting the evidence of the witness, Reuben Brown, to the following question:

What did you say in reply to that?

29. That the said court erred in admitting the evidence of the witness, Reuben Brown, to the following question:

When John left your house and rode away with your horse what did he go for?

30. That the said court erred in overruling the motion of plaintiffs in error to strike out all the conversations between said witness, Reuben Brown, and one W. J. Buchan.

31. That the said court erred in admitting the evidence of the witness, Levi Baldwin, produced on behalf of the defendant in error, to the following question:

What did you do after you arrived at Medicine Lodge?

32. That the said court erred in overruling the motion of plaintiffs in error to strike out the answer of witness, Levi Baldwin, "I consulted the people and physicians in regard to taking the remains home."

33. That the said court erred in overruling the motion of plaintiffs in error to strike out that portion of the answer of the witness, Levi Baldwin, "They thought it was not best at that time."

34. That the said court erred in admitting the evidence of the witness, John Eldridge, produced on behalf of the defendant in error, to the following question:

State what you saw with regard to the money he had.

35. That the said court erred in admitting the evidence of
321 the witness, John Eldridge, to the following question:

Did you notice the denomination of the bills?

36. That the said court erred in admitting the evidence of the witness, John Eldridge, to the following question:

How large a package was it that he had?

37. That the said court erred in admitting the evidence of the witness, John Eldridge, to the following question:

State how thick the packages were.

38. That the said court erred in admitting the evidence of the witness, John Eldridge, to the following question:

Each of them that thickness, you should judge?

39. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, on her own behalf, to the following question:

Now, then, what was said between you and Mr. Selig in relation to the policy?

40. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following questions:

From whom did you receive that policy?

At that time?

41. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

What was said between you and Mr. Selig in relation to the policy at the time you obtained it?

42. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

322 Go on and state what you told him.

43. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

What did he reply?

44. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

What did he say about the premiums having been paid?

45. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

When you asked him to return the premium did he refuse to do so?

46. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

What did he say?

47. That the said court erred in admitting the evidence of the witness, Henry S. Clark, produced on behalf of the defendant in error, to the following question:

How did that boot fit your foot?

48. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

How much?

49. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

What size boot or shoe do you wear?

50. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

Did you serve any subpœna upon Mrs. Hillmon to produce any pictures upon that inquest?

51. That the said court erred in admitting the evidence of

323 the witness, Henry S. Clark, to the following question:

Did you receive any pictures from Mrs. Hillmon, or were there any delivered there at that inquest?

52. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

Did you see among those pictures obtained from Mrs. Hillmon a tintype of John H. Brown and Mr. Hillmon together, standing?

53. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

When did you last see that picture?

54. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

Where was that?

55. That the said court erred in sustaining the motion of the defendant in error to strike out the statement of the witness, Mr. A. L. Selig, produced on behalf of the plaintiffs in error, that Hillmon was five feet nine inches high.

56. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, A. L. Selig, as follows:

You may state whether or not twenty-five thousand dollars is a usual or unusual amount of insurance for one person to have, taking into consideration your experience as an agent.

57. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, A. L. Selig, as follows:

Now, you may state if you ever knew of a party worth three to four thousand dollars carrying twenty-five thousand dollars life insurance.

324 58. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, A. L. Selig, as follows:

You may state whether or not twenty-five thousand dollars would be an ordinary or an exceedingly large amount of insurance for a person in those circumstances to carry, so far as your experience is concerned.

59. That the said court erred in sustaining the motion of the defendant in error to strike out the answer of the witness, Mrs. G. A. Nichols, produced on behalf of the plaintiffs in error, to the following question:

Q. "Do you know anything in regard to the scar on his hand?"

A. "Well, I didn't see the scar, that I remember of, but I heard him and my husband talking about it while I was getting supper, in the evening, but I didn't notice it."

60. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Mrs. G. A. Nichols, as follows:

Now, in regard to the other members of the family, how about their teeth?

61. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Mrs. G. A. Nichols, as follows:

Have you bad teeth?

62. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Mrs. G. A. Nichols, as follows:

Did you and your brother, John W. Hillmon, have any conversation concerning teeth at that time?

325 63. That the said court erred in sustaining the motion of the defendant in error to strike out the answer of the witness, W. J. Buchan, as follows:

"No, sir; she came there for the purpose of signing these releases; her mind was fully made up to sign them," with the exception of the words "No, sir."

64. That the court erred in admitting the evidence of the witness, W. J. Buchan, produced on behalf of the plaintiffs in error, to the following question, propounded by defendant in error on cross-examination:

You could not prevent Walker arresting him if he wanted to?

65. That the said court erred in sustaining the motion of the defendant in error to strike out the following answer of the witness, V. G. Miller, to the following question:

Q. Under what circumstances did you make that memorandum there?

A. He came to my office and said he had made a mistake as to his height.

66. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Dr. V. G. Miller, as follows:

Now, you may state what that is.

67. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Dr. V. G. Miller, as follows:

At whose request was this memorandum made?

68. That the said court erred in refusing to admit the testimony offered by the plaintiffs in error of that portion of page 328 in evidence of Exhibit 23 as commencing with the word "Lawrence"
326 and ends with the word "Miller."

69. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, E. B. Good, produced on behalf of the plaintiffs in error, as follows:

You may state what her conduct was on that occasion, whether it was serious or—just state the facts in reference to that matter.

70. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, E. B. Good, as follows:

I don't ask what she said. I will ask you in regard to her manner of talking with the attorneys and the examining parties in regard to that.

71. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, E. B. Good, as follows:

State on that occasion what exhibitions of grief, if any, she made.

72. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Dr. J. H. Stewart, produced on behalf of the plaintiffs in error, as follows:

How did you come to measure him?

73. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, C. R. Walters, produced on behalf of the plaintiffs in error, as follows:

Now, you may state if you know how the other members of the family—your father, mother, and sisters—have regarded your brother Frederick Adolph—whether they have regarded him as being dead since they received those photographs.

74. That the said court erred in that it refused to allow the
327 said witness, C. R. Walters, to state the contents of a letter received by him from his brother, Frederick Adolph Walters, written at Wichita, Kansas.

75. That the said court erred in admitting the evidence of the witness, C. R. Walters, to the following question:

Is it not a fact, Mr. Walters, that in 1880 you had no knowledge that your brother had been west of this city (Topeka); that in 1880 you stated in your letter—in one of your letters—that you understood that he died near the city of Topeka?

76. That the court erred in admitting the evidence of the witness, C. R. Walters, to the following question:

The question I am asking now is if it was not your understanding in 1880 that the last you had heard from your brother was from the vicinity of Topeka? Didn't you so understand?

77. That the said court erred in admitting the evidence of the witness, C. R. Walters, to the following question:

I wish to ask the question: You may state if in the letter shown you, dated May 22nd, 1880, you did not say——

78. That the said court erred in overruling the objection of the plaintiff in error to the following question asked the witness, C. R. Walters, and permitting the same to be answered:

In that paragraph did you not say: "As regards your other questions, will say my brother, I think, had some dentistry performed on his teeth—a few fillings, perhaps. He also had a high instep and corns on his feet, although I cannot give a more positive description than the one already sent you, aside from this, as my brother and I were only a few times together in the past ten years."

79. That the said court erred in overruling the objection
328 of the plaintiff in error to the following question asked the witness, C. R. Walters, and permitting same to be answered:

The question is, Did you write or say that in this letter?

80. That the said court erred in overruling the objection of the plaintiff in error to the following question asked the witness, C. R. Walters, and permitting same to be answered:

Did you not also say in that letter: "He visited me for a week or so, then went to Paola, Kansas, where he remained for a short time; after that he went to Topeka, and, in the spring of 1879, towards Lawrence. I received few letters from him, as he never wrote often"?

81. That the court erred in sustaining the objection of the defendant in error and in not permitting the plaintiffs in error to introduce that portion of said letter included in the question of the plaintiffs in error, as follows:

I will ask you to state—look at this portion of the letter to which your attention has been called by the counsel for plaintiff, commencing there——

Then I desire to offer the portion of this letter, it being the same letter to which your attention has been called by the counsel for plaintiff and in reference to which you were asked questions, commencing with the words "You could gain nothing" and ending

with the words "over the sad affair," on page two of the letter; and in the same connection will offer in evidence—I will ask the witness if at the same time he did not write the following words, commencing with the words "my mother" and ending with the words "deranged over the sad affair."

(Here follows the portion of the letter offered in evidence.)

329 "You would gain nothing yourself by going to Iowa, as I can and will give you all the information in our possession regarding this affair; besides, your going there would be distasteful to my folks, as they are deeply mourning the dead man at Lawrence as their relative—particularly my mother, who is now almost deranged over the sad affair."

82. That the said court erred in ruling out that portion of said letter as called for by plaintiffs in error, that portion of said letter being as follows:

"If there is any doubt of the dead man being my brother, of course the sooner I know it the better; also for all concerned. I have no sympathy for the insurance companies you mention whatever, for they have no interest—at least, but their own—and, of course, no thought of justice in the matter if they really believe the man in question to have been murdered as supposed."

83. That the said court erred in sustaining the objection of the defendant in error to question propounded by plaintiffs in error to witness, Elizabeth Rieffenach, as follows:

Now you may state if you know how the other members of the family—your father, mother, and sisters—have regarded your brother Frederick Adolph—whether they have regarded him as living or dead—since they have received those pictures.

84. That the said court erred in sustaining objection of defendant in error to the question asked of said witness, Elizabeth Reiffenach, by plaintiffs in error as follows:

You may state how your father regarded this matter after he received the picture—whether he regarded him as dead or living.

85. That the said court erred in refusing to allow the said witness, Elizabeth Rieffenach, to state the contents of the letter re-
330 ceived by her from her brother, Frederick Adolph Walters, which letter is dated March 4th or 5th or 3rd or 4th, 1879, and which is as follows:

"DEAR SISTER AND ALL: I now in my usual style drop you a few lines to let you know that I expect to leave Wichita on or about March the 5th with a certain Mr. Hillmon, a sheep-trader, for Colorado or parts unknown to me. I expect to see the country now. News are of no interest to you, as you are not acquainted here. I will close with compliments to all inquiring friends. Love to you all.

I am truly your brother,

FRED. ADOLPH WALTERS."

86. That the said court erred in excluding the letter written by Frederick Adolph Walters to Miss Alvina Kasten, offered by said plaintiffs in error as a part of the testimony of said Alvina Kasten, a witness produced in their behalf, which letter is as follows:

WICHITA, *Mar.* 1*st*, 1879.

DEAREST ALVINA: Your kind and ever-welcome letter was received yesterday afternoon, about an hour before I left Emporia. I will stay here until the fore part of next week, and then will leave here to see a part of the country that I never expected to see when I left home, as I am going with a man by the name of Hillmon, who intends to start a sheep ranch, and as he promised me more wages than I could make at anything else I concluded to take it, for awhile at least, until I strike something better. There is so many folks in this country that have got the Leadville fever, and if I could not of got the situation that I have now I would have went there myself; but as it is at present I get to see the best por-
331 tion of Kansas, Indian Territory, Colorado, and Mexico. The route that we intend to take would cost a man to travel from $150.00 to $200.00, but it will not cost me a cent; besides, I get good wages. I will drop you a letter occasionally until I get settled down; then I want you to answer it (you bet, honey)—don't it? So you can see that I will not get home for a few months yet, but cannot tell how soon I will get back. I am about as anxious to see you as you are to see me, but I do not want to get back there without a cent of money, for that is what I left for (you know).

When I get back you will get to see me in about the way we parted (you bet). If any one asks you what I am doing tell them that you were not informed, for it is none of their business; and another thing: Don't ask me to write long letters, for I would without being told; so I will not waste any more paper on that subject (at present). I will have to come to a close before long, or I will have to do as that other fellow—write two sheets and swindle the p'master out of three cents, and you know I don't like to do that (pet).

Please give compliments to inquiring friends and all the love that you can embrace for yourself and nobody else. I will close for this time, love, to let you hear from me soon again.

Yours as ever, F. A. WALTER.

87. That the said court erred in excluding the evidence of Colonel Bradley, Judges Horton, Valentine, Johnson, and Humphrey to the following question:

State the reputation for professional integrity and standing of said W. J. Buchan.

88. That the said several judgments were given for the said Sallie E. Hillmon, defendant in error, when they ought to have
332 been given for the said Mutual Life Insurance Company of New York, The New York Life Insurance Company, and The Connecticut Mutual Life Insurance Company, plaintiffs in error, according to the law of the land.

The said Mutual Life Insurance Company of New York, The New York Life Insurance Company, and The Connecticut Mutual Life Insurance Company, plaintiffs in error, therefore pray that the said several judgments rendered against them respectively may be reversed and the said plaintiffs in error be restored to all things each has lost by reason thereof.

GEO. J. BARKER &
J. W. GREEN,
Att'ys for said Plaintiffs in Error.

Endorsed: Nos. 3147, 3148, 3149. The Mutual Life Insurance Company of New York *et al. vs.* Sallie E. Hillmon. Petition in error. Filed Aug. 10, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

333 In the United States Circuit Court, District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant. } Bond.

Know all men by these presents that we, C. K. Holliday and Frank G. Willard, are held and firmly bound unto Sallie E. Hillmon in the full and just sum of twenty thousand dollars ($20,000.00), to be paid to the said Sallie E. Hillmon, her certain attorney, executor, administrator, or assign; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 11th day of August, 1888.

Whereas lately, at a term of the circuit court of the United States of America for the eighth circuit and district of Kansas, in a suit in said court depending between Sallie E. Hillmon, plaintiff, and The New York Life Insurance Company, defendant, which action was consolidated and tried with the cases of the said Sallie E. Hillmon against The Connecticut Mutual Life Insurance Company and The Mutual Life Insurance Company of New York; and the said defendants having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, and a citation directed to the said Sallie E. Hillmon, citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said New York Life Insurance Company shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to
334 remain in full force and effect.

C. K. HOLLIDAY. [SEAL.]
FRANK G. WILLARD. [SEAL.]

Signed and sealed in the presence of—
—— ——.

Approved by—
C. G. FOSTER, *Judge.*

STATE OF ——, }
County of ——. }

—— ——, being duly sworn, deposes and says that he is the —— mentioned in the foregoing instrument, and that he duly executed the same, and that he is worth the sum of $—— over and above all debts, exemptions, and liabilities.

—— ——.

Subscribed and sworn to before me this — day of ——, A. D. 1888.

—— ——.

Endorsed: No. 3148. Sallie E. Hillmon *vs.* The New York Life Insurance Company. Bond. Filed August 11, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

335 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Sallie E. Hillmon *vs.* The New York Life Insurance Company, No. 3148, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

The Seal of the Circuit Court of the United States, District of Kansas, 1862.

Witness the Honorable Samuel F. Miller, senior associate justice of the Supreme Court of the United States of America, this 14th day of August, A. D. 1888.

A. S. THOMAS,
Clerk of the Circuit Court of the United States for the District of Kansas.

Allowed.
C. G. FOSTER, *Judge.*

[Endorsed:] No. 3148. The New York Life Insurance Company, pl'ff in error, *vs.* Sallie E. Hillmon, def't in error. Writ of error. Filed Aug. 14, 1888. A. S. Thomas, clerk.

336 The United States of America to Sallie E. Hillmon, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Kansas, wherein The New York Life Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment entered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, this fifteenth day of August, in the year of our Lord one thousand eight hundred and eighty-eight.

C. G. FOSTER, *Judge.*

Attest:

{ The Seal of the Circuit Court of the United States, District of Kansas, 1862. }

A. S. THOMAS, *Clerk,*
By FRANK J. THOMAS, *Deputy.*

On this 1st day of Sept., in the year of our Lord one thousand eight hundred and eighty-eight, personally appeared Charles Currier before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Sallie E. Hillmon, at Leavenworth, Leavenworth county, State and district of Kansas, Aug. 18, 1888.

CHARLES CURRIER.

Subscribed and sworn to before me this 1st day of Sept., A. D. 1888.

{ The Seal of the Circuit Court of the United States, District of Kansas, 1862. }

A. S. THOMAS, *Clerk,*
By FRANK J. THOMAS, *Deputy.*

Fees, $5.90; paid by pl'ff in error.

[Endorsed:] No. 3148. The New York Life Insurance Company, pl'ff in error, *vs.* Sallie E. Hillmon, def't in error. Citation. Filed Sept. 1, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

337 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and correct copy of all the record and proceedings had in said court except "amended reply to amended answer," filed Jan. 2, 1882, and "amended answer," filed June 26, 1882, in the action of Sallie E. Hillmon *vs.* The New York Life Insurance Company, No. 3148, in said court.

The Seal of the Circuit Court of the United States, District of Kansas, 1862.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Topeka, in said district of Kansas, this 12th day of September, A. D. 1888.

A. S. THOMAS, *Clerk.*

338 UNITED STATES OF AMERICA, *District of Kansas*, } *ss:*

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant. } Petition.

The said Sallie E. Hillmon, who is a citizen of the State of Kansas and the plaintiff in this the above-entitled action, complains of The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, the defendant herein; which said defendant is a citizen of the State of Connecticut and is and was at the several times herein mentioned an existing corporation, with power and authority, among other things, to contract as such and to make and enter into such contracts and agreements as are hereinafter mentioned, and to make and execute the policy of insurance hereinafter mentioned; which said corporation was created and organized and exists in said State of Connecticut and under and by virtue of the laws thereof.

And said plaintiff further avers that heretofore, to wit, on the fourth day of March, A. D. 1879, said defendant, by Jacob L. Greene, its president, and L. H. Wells, its assistant secretary, its agents in that behalf, by it thereunto duly appointed and authorized, for certain considerations and premiums, including the annual premium of one hundred and sixteen and $\frac{45}{100}$ dollars to it paid and to be paid, made, executed, and delivered to said plaintiff its certain written instrument of that date, commonly called a policy of insurance, of which said policy a copy is herewith filed, hereto attached, marked "Exhibit No. 1," and made part hereof.

339 And said plaintiff further avers that the John W. Hillmon in said policy mentioned was at the time of the execution thereof and until his death the husband of said plaintiff, and said plaintiff then had and until the death of said John W. Hillmon continued to have a valuable and insurable interest in his life.

And said plaintiff further avers that said defendant did in and by said policy of insurance insure the life of said John W. Hillmon for the term of his natural life, in the sum and to the amount of five thousand dollars, for the sole use and benefit of said plaintiff, to be paid, at the office of said defendant, in Hartford, Connecticut, to said plaintiff or to her legal representatives thirty days after due notice and satisfactory evidence of the death of said John W. Hillmon while that contract—that is, the contract shown by said policy—was in full force and effect should have been received at said office,

in Hartford, Connecticut; or, if the said plaintiff should be not then living, that said sum insured should be payable as above to her children, or to their guardian if under age, any balance of the year's premium when not all paid at the beginning of the year and any other indebtedness to said defendant on account of that policy being first deducted therefrom, as shown by that policy, and said copy thereof is referred to for a more full description of the same.

And said plaintiff further avers that afterwards and heretofore, to wit, on the seventeenth day of March, A. D. 1879, said John W. Hillmon died and his natural life and the term thereof ended during the continuance of said policy and while the aforesaid contract was in full force and effect, and he did not die because of any excepted or objectionable cause in said policy specified or referred to.

340 And said plaintiff further avers that — said John W. Hillmon in his lifetime duly performed all and singular the conditions and requirements on their or either of their parts and all the conditions in or by said policy of insurance made, shown, or referred to on their, said plaintiff's and John W. Hillmon's, or either of their parts to be done or performed, including the giving of due notice and furnishing of satisfactory evidence by said plaintiff to said defendant of the death of said John W. Hillmon while said contract was in full force and effect, and which was duly received by said defendant at its office, in Hartford aforesaid, more than ninety days before the time of the commencement of this action and during the continuance of said policy.

Yet said defendant, though often requested, has not as yet ever paid to said plaintiff the sum of money above mentioned, nor any part thereof, nor any interest thereon; but, on the contrary, to pay the same or any part thereof said defendant has hitherto and still does wholly neglect and refuse.

Wherefore said plaintiff prays and demands judgment against said defendant in the sum of five thousand dollars, with interest thereon, at the rate of seven per cent. per annum, from the nineteenth day of August, A. D. 1879, and for costs of suit, &c.

L. B. WHEAT,
R. J. BORGHOLTHAUS,
SAMUEL A. RIGGS &
JOHN HUTCHINGS,
Att'ys for Plaintiff.

Præcipe.

The clerk of the above-named court will please issue summons for the defendant in this action, directed to the superintendent of insurance of the State of Kansas, returnable according to law.

Action brought for the recovery of money. Am't claimed,
341 five thousand dollars, with interest thereon from the nineteenth day of August, A. D. 1879, at the rate of seven per cent. per annum.

L. B. WHEAT,
R. J. BORGHOLTHAUS,
SAMUEL A. RIGGS &
JOHN HUTCHINGS,
Att'ys for Plaintiff.

EXHIBIT No. 1.

No. 153,614. Age, 31. Premium, $116.45. $5,000.

The Connecticut Mutual Life Insurance Company of Hartford, Conn., in consideration of the application for this insurance, which is a part of this contract, and a copy whereof is hereto annexed, and of the several answers therein contained, and that the application doth warrant the same to be in all respects true, and of the annual premium of one hundred and sixteen dollars and forty-five cents, to be paid them on or before the fourth day of March in every year during the continuance of this policy, do hereby insure the life of John W. Hillmon, the insured, of Lawrence, county of Douglas, and State of Kansas, for the term of his natural life, subject to the conditions and agreements upon the second page of this policy, which are hereby referred to and made a part of this contract the same — if they were recited at length over the signatures hereto affixed, in the sum of five thousand dollars, for the sole use and benefit of Sallie E. Hillmon, the assured, wife of the said insured, the said sum insured — be paid at the office of this company, in Hartford, Conn., to the said assured or to her legal representatives ninety days after due notice and satisfactory evidence of the death of the said
342 insured, while this contract is in full force and effect, shall have been received at said office in Hartford, Conn., or if the said assured be not then living the said sum insured shall be payable as above to her children, or to their guardian if under age, any balance of the year's premium when not all paid at the beginning of the year and any other indebtedness to this company on account of this policy being first deducted therefrom.

In witness whereof the said Connecticut Mutual Insurance Company have by their president and secretary signed and delivered this contract in the city of Hartford, State of Connecticut, this fourth day of March, A. D. one thousand eight hundred and seventy-nine.

JACOB L. GREENE, *President.*
D. H. WELLS, *Ass't Secretary.*

Wife. Ann. life.

This policy — issued and accepted upon the following express conditions and agreements, referred to on the first page and made a part of this contract:

1st. That this contract between this company and the insured is wholly expressed and contained in this policy and the application therefor, which is a part of said contract, and a copy whereof is hereto annexed, and that the several answers contained in or indorsed upon the said application are warranted by the insured and assured to be true in all respects, and that if this policy has been obtained by or through any fraud, misrepresentations, evasion, or concealment, then the same shall be absolutely null and void; and, further, that no statement or declaration made to any agent, solicitor, canvasser, examiner, or any other person, and not contained in

said application, shall be taken or considered as having been
343 made to or brought to the notice or knowledge of this company, and this company shall be held and considered as having no notice or knowledge of such statement or declaration and as having no liability by reason thereof; and the said application, a copy of which is hereto annexed, shall be taken and held to be and contain the only answers or statements or declarations made to this company in behalf of this insurance.

Payment of premiums.

2d. That this policy shall not be in force and binding on this company until the advance premium hereon shall have been actually paid during the lifetime of the insured, and that if any subsequent premium or instalment of premium on this policy be not paid when due, then this policy *be not paid when due then this policy* shall cease and determine and become and be null and void, and this company shall not be liable for the payment of the sum insured herein nor of any part thereof, and that no premium on this policy shall be considered as paid unless a receipt shall be given therefor signed by the president or secretary of the company, and such receipt is the sole evidence of the authority of any agent to receive any premium on account of this policy.

Residence, travel, occupation, duelling, violation of law.

3rd. That the said insured is, under this policy, fully permitted to reside in any civilized abode in the Western Hemisphere lying north of thirty-second parallel (excepting from the first day of July to the first day of November), and in the Eastern Hemisphere lying north of the forty-second parallel of north latitude and west of the fortieth meridian of longitude east from Greenwich; and he may also pass as a passenger by usual routes and means of public conveyance to and from any port or place within the foregoing limits; but
344 if — shall at any time during the continuance of this policy pass beyond or be without the foregoing limits, or shall be personally engaged in making any aeronautic voyage or excursion, or in blasting, mining, or in any submarine operations; or in the manufacture, handling, use, custody, or transportation of highly inflammable or explosive substances; or as an employee in any capacity upon service on any ocean, sea, sound, inlet, river, lake, or railroad; or if he shall enter into any military or naval service whatsoever, whether voluntary or otherwise (the military when not in actual service alone excepted), or become or be a member of any paid fire department without the consent of this company previously given in writing; *in each and every of the foregoing cases, this policy* shall be convicted of felony; then in each and every of the foregoing cases this policy shall become and be null and void.

Suicide.

4th. That the self-destruction of the insured, whether voluntary or involuntary and whether he be sane or insane at the time thereof,

is not a risk assumed by this company under this contract, but in every such case the company will pay, in manner and form as hereinbefore provided, only the then net reserve upon this policy according to the combined experience table of mortality, assuming four per centum compound interest, deducting therefrom any indebtedness on account of this policy, and shall not be deemed or held liable for any greater sum, *or* payment of said sum shall be a full discharge of all liability by reason of this contract.

Intemperance and delirium tremens.

5th. That if the insured shall die in a state of drunkenness or from any disease in any degree produced by or resulting from
345 the occasional or habitual use of alcohol, or shall thereby injure or impair his health, whether permanently or temporarily, or shall die from any accident or violence received while in a case of intoxication or in consequence thereof, or shall have delirium tremens, then in each and every of the foregoing cases this policy shall become and be null and void.

Assignments.

6th. That no assignment of this policy shall be valid; but the company shall have power, but at its own discretion, to accept a surrender and discharge of the same by the assured.

Paid-up insurance.

7th. That if after the payment of three or more full annual premiums upon this policy the same shall cease and determine by default in the payment of any subsequent premium when due, then this company will grant a paid-up policy, payable as above, for an amount to be determined as follows: From the net reserve on account of this policy at the time of such default there shall be deducted any indebtedness on account of this policy at the time of such default, *there shall be deducted any indebtedness on account of this policy*, and, in addition, the difference, for the year following such default, between the normal cost of insurance under this policy and the normal cost of insurance under the paid-up policy to be insured, the computations to be based upon the actuaries' or combined experience table of mortality and four per centum compound interest. The remainder of said reserve shall be used as a single premium for paid-up insurance, at the then present age of the insured, according to the published single-premium tables of this company: Provided, that this policy shall be released and surrendered to and received by this company and written application made for such paid-up policy during the lifetime of the said insured and within one
346 year after default in the payment of premium hereon shall first be paid.

Forfeiture of premiums.

8th. That in every case in which this policy shall cease and determine or shall become and be null and void all premiums paid and

moneys or credits held on account of the same — be forfeited to this company.

Authority of agents.

9th. That agents of the company have no power or authority to make, alter, change, or modify any of the terms, conditions, or agreements of this policy or to waive forfeitures thereof, and no alteration, change, modification waived, or subsequent agreement whatever respecting this policy shall be binding on said company unless made in writing, signed by the executive officers thereof.

Premium credit.

10th. That the sum of — dollars of first annual premium hereon is acknowledged as an indebtedness against this policy, with interest at six per cent. per annum, payable annually until paid, and that said indebtedness, unless sooner demanded, shall be due and payable at the maturity or other settlement of this policy.

Endorsed: No. 3149. Circuit court of the United States, district of Kansas. Sallie E. Hillmon *vs.* The Connecticut Mutual Life Insurance Company of Hartford, Conn. Petition. L. B. Wheat, R. J. Borgholthaus, Samuel A. Riggs & John Hutchings, att'ys for plaintiff. Filed July 13, 1880. A. S. Thomas, clerk.

347 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

I enter myself security for costs in said case and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by her I hereby agree and stipulate that execution may issue against my property for any costs taxed against her.

Dated 22 day of May, 1880.

ALLEN J. PHILLIPS.

Endorsed: No. 3149. Sallie E. Hillmon *vs.* Connecticut Mutual Life Ins. Co. of Hartford. Security for costs. Filed July 13, 1880. A. S. Thomas, clerk. Approved July 13, 1880. A. S. Thomas, clerk.

348 STATE OF KANSAS, INSURANCE DEPARTMENT.

I, Orrin T. Welch, superintendent of insurance for the State of Kansas, do hereby certify that I received the annexed summons in case of Sallie E. Hillmon *versus* The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, issued by

the clerk of the circuit court of the United States of America, district of Kansas, dated the 13th day of July, A. D. 1880, on the 13th day of July, A. D. 1880, at 3 o'clock p. m., and that on the 14th day of July, A. D. 1880, I forwarded two duly certified copies of the same by depositing them in the United States mail, postage paid, addressed as follows: John M. Taylor, sec'y of the Connecticut Mutual Life Ins. Co., Hartford, Conn.; James G. Graham, general agent Conn. Mutual Life Ins. Co., Leavenworth, Kans.

In witness whereof I have hereunto set my hand and [SEAL.] affixed my official seal, at the city of Topeka, this 14th day of July, A. D. 1880.

ORRIN T. WELCH,
Superintendent.

Fees:	
Making copy for sec'y of Co.	25
" certificate on same	25
Certifying the same	1 00
Making certificate of return	25
Certifying the same	1 00
Making copy for gen. agent of Co.	25
Making certificate on same	25
Certifying the same	1 00
Total	$4 25

349 Circuit Court of the United States of America, District of Kansas, *ss:*

The United States of America to Orrin T. Welch, superintendent of insurance of the State of Kansas, Greeting:

You are hereby commanded to notify the Connecticut Mutual Life Insurance Company of Hartford, Connecticut, that it has been sued by Sallie E. Hillmon in the circuit court of the United States for the district of Kansas, and that unless it answer by the twenty-second day of August, A. D. 1880, the petition of the said Sallie E. Hillmon against it filed in the clerk's office of the said court such petition will be taken as true and judgment rendered accordingly. You will make due return of this writ according to law.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Topeka, in said district, this 13th day of July, A. D. 1880.

[SEAL.] A. S. THOMAS, *Clerk.*

[Endorsed:] No. 3149. Circuit court of the United States, district of Kansas. Sallie E. Hillmon *vs.* The Connecticut Mutual Life Insurance Company of Hartford, Connecticut. Summons. Issued July 13, 1880, returnable according to law. Filed July 14, 1880. A. S. Thomas, clerk. L. B. Wheat, R. J. Borghalthaus, Samuel A. Riggs & John Hutchings, attorneys for plaintiff.

Suit brought for the recovery of money. Amount claimed, $5,000.00, with interest from the 19 day of August, A. D. 1879, at the rate of 7 per cent. per annum.

L. B. WHEAT,
R. J. BORGHALTHAUS,
SAMUEL A. RIGGS &
JOHN HUTCHINGS,
Attorneys for Plaintiff.

U. S. Marshal's Return.

DISTRICT OF KANSAS, *ss:*

Received the within writ —— the —, 188–.

—— ——.

350 UNITED STATES OF AMERICA, }
District of Kansas. }

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

And now, at this day, comes the Connecticut Mutual Life Insurance Company of Hartford, Connecticut, and moves the court here for an order requiring said plaintiff, Sallie E. Hillmon, to give additional security for costs in said action for the following reasons, to wit:

1st. That the security, Allen J. Phillips, is insolvent.

2nd. That the said Allen J. Phillips is insufficient financially as a security for costs in said action.

J. W. GREEN AND
GEO. J. BARKER,
Att'ys for Def't.

Endorsed: No. 3149. Sallie E. Hillmon *vs.* The Connecticut Mutual Life Insurance Company. Motion requiring additional security for costs. Filed Aug. 21, 1880. A. S. Thomas, clerk. J. W. Green and Geo. J. Barker, att'ys for def't.

UNITED STATES OF AMERICA, }
District of Kansas. }

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

And now, at this day, comes the Connecticut Mutual Life Insur-

ance Company of Hartford, Connecticut, and moves the court here for an order requiring said plaintiff, Sallie E. Hillmon, to
351 make her said petition more definite and certain, in this, to wit:

That said plaintiff be required to state specifically of what particular disease, injury, or cause said John W. Hillman died.

J. W. GREEN AND
GEO. J. BARKER,
Att'ys for Def't.

Endorsed: No. 3149. Sallie E. Hillman *vs.* The Connecticut Mutual Life Insurance Company. Motion to make petition more definite and certain. Filed Aug. 21, 1880. A. S. Thomas, clerk. J. W. Green and Geo. J. Barker, att'ys for def't.

352 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 22nd day of November, A. D. 1880, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 3149.

FRIDAY, *December* 3, 1880.

Now come the parties hereto, by their attorneys, and thereupon the defendant's motions for additional security for costs and to make petition more definite and certain came on to be heard and were argued by counsel; on consideration whereof it is ordered by the court that the sureties herein do justify within ten days from this date, and the motion to make petition more definite and certain is overruled; to which ruling defendant excepts. Leave is given defendant to file answer in thirty days, and action continued to the next term of this court.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *December* 18, 1880.

The defendant's motion for additional security for costs came on to be heard and was argued by counsel; on consideration whereof it is ordered by the court that the same be, and is hereby, overruled.

353 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant.
} Answer.

The defendant, The Connecticut Mutual Life Insurance Company, for its first defense, represents and shows to the court that it denies all and singular the allegations and averments set forth and contained in said plaintiff's petition filed herein; and for a further and second defense said defendant shows that on or about the — day of ——, A. D. 1879, a dispute, difference, and controversy subsisted between said plaintiff and defendant, in this, to wit: Said plaintiff claimed that one John W. Hillmon, the person mentioned in the insurance policy in said plaintiff's petition set forth, died near Medicine Lodge, in Barbour county, State of Kansas, on or about the — day of ——, A. D. 1879, from a gunshot wound received from a gun then and there accidentally discharged by one John S. Brown, and that by reason thereof a cause of action had accrued to her, said plaintiff, while said defendant denied that said John W. Hillmon was dead, and that any cause of action had accrued to said plaintiff.

That for the purpose of ending said dispute and controversy said plaintiff, for a good and valuable consideration to her by said defendant paid, made, executed, and to said defendant delivered her certain release and satisfaction in writing, of which the following is a true copy, to wit:

LEAVENWORTH, KANS., *Sept.* 15, 1879.

In consideration of one dollar to me in hand paid, the receipt whereof is hereby acknowledged, I hereby acknowledge satisfaction in full and release and surrender all claims under and by rea-
354 son of policy No. 153,614, dated March 4th, 1879, for five thousand dollars, issued by the Connecticut Mutual Life Insurance Company of Connecticut on the life of my husband, John W. Hillmon, and hereby enter satisfaction in full and order the dismissal of any and all suits or proceedings commenced or that may hereafter be begun by any person or persons in my name and behalf for the collection of the same.

(Signed) S. E. HILLMAN.

Attest:
W. J. BUCHAN.
JOHN H. BROWN.

Wherefore defendant asks judgment for costs herein.

J. W. GREEN AND
GEO. J. BARKER,
Att'ys for Def't.

Endorsed: No. 3149. Sallie E. Hillmon, pl'ff, *vs.* The Connecticut Mutual Life Insurance Company of Connecticut, def't. Answer. Filed Jan. 3, 1881. A. S. Thomas, clerk. J. W. Green and Geo. J. Barker, att'ys for def't.

Circuit Court of the United States, District of Kansas.

SALLIE E. HILLMON, Pl'ff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Def't. } Reply.

The plaintiff, for her reply to the answer of the defendant herein filed, says:

I. That she denies each and every allegation in said answer contained.

II. That the said so-called release and satisfaction in writing in the second defense in defendant's answer set out was obtained from the plaintiff without any consideration whatever and was and is inoperative and void.

III. That at the county of Barbour, in the State of Kansas, on or about the 17th day of March, A. D. 1879, John W. Hillmon, the
355 husband of this plaintiff and the person whose life was insured in and by the policy set out in plaintiff's petition, died from a gunshot wound produced by the accidental discharge of a gun in the hands of one John H. Brown; that on or about the 15th day of September, A. D. 1879, the date of the so-called release and satisfaction set out in defendant's second defense, the said defendant, by its duly authorized agents and other persons by the procurement of said defendant, falsely and fraudulently represented to this plaintiff that her husband, the said John W. Hillmon, was then still living and the said John H. Brown would so testify on the trial of any action brought to recover the amount due under said policies, and that he would testify that the body which had been produced and identified by her as the body of her said husband was not the body of said John W. Hillmon, but was the body of another and different person, and, to induce the plaintiff to believe the said false and fraudulent representations, procured the said John H. Brown, upon whose testimony the plaintiff was relying to establish the fact of the death of her said husband and her right to recover the amount of said policies, to make a statement in writing to the effect that the said John W. Hillmon was still living as aforesaid, and that the body which had been produced and identified by her as her said husband was not the body of the said John W. Hillmon, but was the body of another and different person; that the said representations, at the time the same were made and at the time the so-called release and satisfaction was signed by this plaintiff, were false and were known to be false by said defendant, its agents, and the persons making the same, and the same were made for the purpose and with the intention of deceiving and defrauding this

plaintiff of her right to recover the amount due her on and under said policy.

356 That this plaintiff, by means of said false and fraudulent representations and the said statement of said John H. Brown, and being thereby led and influenced to believe that said Brown would testify as the defendant and its agents had represented, contrary to the truth and the facts in the premises, was induced by said defendant and its agents and other persons acting in its behalf to sign and deliver without consideration the so-called release and satisfaction set out in defendant's second defense.

L. B. WHEAT,
SAM'L A. RIGGS,
R. J. BORGHALTHAUS,
JOHN HUTCHINGS,
Att'ys for Plaintiff.

The time to file the foregoing reply is hereby extended to and including March 21st, A. D. 1881.

GEO. J. BARKER,
J. W. GREEN,
Att'ys for Defendant.

Endorsed: No. 3149. Circuit court of the United States, district of Kansas. Sallie E. Hillmon *vs.* Connecticut Mutual Life Insurance Company. Reply. L. B. Wheat, S. A. Riggs, R. J. Borghalthaus & John Hutchings, att'ys for pl'ff. Filed Mar. 21, 1881. A. S. Thomas, clerk.

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant.

To said plaintiff and her attorneys of record:

You are hereby notified that on Tuesday, the 7th day of June, A. D. 1881, at ten (10) o'clock a. m., or as soon thereafter as counsel can be heard, the defendant will apply to the court for leave to file an amended answer in said action.

357 Lawrence, Ks., June 6th, 1881.

J. W. GREEN &
GEO. J. BARKER,
Att'ys for Def't.

Service accepted on day above named.

——— ———.

STATE OF KANSAS,
County of Leavenworth.

Geo. J. Barker, being duly sworn, says that he is one of the attorneys of record for the defendant in within-mentioned action, and that he served the within notice upon the plaintiff by delivering

to John Hutchings, Esq., one of her attorneys of record, a true copy thereof on the 6th day June, A. D. 1881, at the city of Lawrence, Kansas.

GEO. J. BARKER.

Subscribed & sworn to before me this 7th day of June, 1881.
[SEAL.] A. S. THOMAS, *Clerk.*

Endorsed: No. 3149. Sallie E. Hillmon *vs.* The Connecticut Mutual Life Insurance Co. Notice. Filed June 7, 1881. A. S. Thomas, clerk. J. W. Green, Geo. J. Barker, att'ys for def't.

358 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 6th day of June, A. D. 1881, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 3149.

TUESDAY, *June* 7, 1881.

Now comes the defendant, by J. W. Green and Geo. J. Barker, its attorneys, and on its motion it is ordered by the court that leave be, and is hereby, given it to file amended answer.

359 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMAN, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant. } Answer.

1st. The defendant, The Connecticut Mutual Life Insurance Company, for its first defense represents and shows to the court that it denies all and singular the allegations and averments contained and set forth in said plaintiff's petition filed herein.

2nd. Said defendant, further answering, says that on and before the 30th day of November, A. D. 1878, one John W. Hillmon, John H. Brown, and Levi Baldwin and divers other persons, to the defendant unknown, unlawfully and fraudulently confederating, conspiring, contriving, and intending to cheat and defraud this defendant, procured a large amount of insurance to be taken on the life of the said John W. Hillmon, to wit, in the New York Life Insurance Company, by its policy numbered 134,418 and dated November 30th, 1878, and for the sum of ten thousand dollars; in the Mutual Life Insurance Company of New York, by its policy numbered 195,132 and dated December 10th, 1878, for the sum of ten thousand dol-

lars, and in the Connecticut Mutual Life Insurance Company, by its policy numbered 153,614 and dated March 4th, 1881, for the sum of five thousand dollars.

That thereafter and in pursuance of said conspiracy and with said intent said Hillman, Brown, and Baldwin did falsely and fraudulently pretend and represent unto this defendant and others that said Hillman was dead, and did, in or about the months of March & April, A. D. 1879, and thereafter, for the purpose of securing the payment of said policies and obtaining the money thereon,
360 falsely and fraudulently claim, pretend, and represent unto this defendant that the said John W. Hillman was dead, and that a certain dead body which they had procured and had was the dead body of the said John W. Hillman, whereas said John W. Hillman was not and is not dead; that since said time the said Hillman has kept himself concealed and has and is keeping himself concealed under assumed names for the purpose of consummating the conspiracy entered into as aforesaid; that no premium or payment of any kind has ever been made on or on account of said policy, & that said policy is void.

3rd. Said defendant, further answering, says that on or about the — day of ——, A. D. 1879, a dispute, difference, and controversy subsisted between said plaintiff and defendant, in this, to wit: Said plaintiff claimed that one John W. Hillman, the person mentioned in the policy of insurance set forth in said plaintiff's petition, died near Medicine Lodge, in Barbour county, State of Kansas, on or about the — day of ——, A. D. 1879, from a gunshot wound then and there accidentally discharged by one John S. Brown, and that by reason thereof a cause of action had accrued to her, this plaintiff, while the said defendant denied that the said John W. Hillman was dead and that any cause of action had accrued to said plaintiff.

That for the purpose of ending said dispute and controversy said plaintiff, for a good and valuable consideration to her by said defendant paid, made, executed, and delivered to said defendant her certain release and satisfaction in writing, of which the following is a true copy, to wit:

"LEAVENWORTH, KANSAS, *Sept.* 15, 1879.

In consideration of one dollar to me in hand paid, the receipt whereof is hereby acknowledged, I hereby release, surrender, and acknowledge satisfaction in full of all claims against the
361 Connecticut Mutual Life Insurance Company by reason of policy No. 153,614, issued by said company, dated March 4th, 1881, and for the sum of five thousand dollars on the life of my husband, John W. Hillman, and hereby enter satisfaction in full and order the dismissal of any and all suits or proceedings commenced or that hereafter may be commenced by any person in my behalf for the collection of the same.

(Signed) SALLIE E. HILLMAN.

Attest:
W. J. BUCHAN.
JOHN H. BROWN."

Wherefore defendant asks judgment that said policy be declared null and void and for costs.

J. W. GREEN,
GEO. J. BARKER,
Att'ys for Defendant.

Endorsed: No. 3149. Sallie E. Hillmon *vs.* The Connecticut Mutual Life Ins. Company. Amended answer. J. W. Green, Geo. J. Barker, att'ys for def't. Filed June 7, 1881. A. S. Thomas, clerk.

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

It is hereby stipulated and agreed by and between the parties hereto that plaintiff shall have thirty days to file a reply to defendant's amended answer filed herein, and that this cause stand continued until the November term, A. D. 1881, of this court.

S. A. RIGGS,
JNO. HUTCHINGS,
R. J. BORGHALTHAUS,
Att'ys for Plaintiff.
GEO. J. BARKER &
J. W. GREEN,
Att'ys for Def't.

Endorsed: No. 3149. Sallie E. Hillmon *vs.* The Con. Mutual Life Ins. Company. Stipulation. Filed June 14, 1881. A. S. Thomas, clerk.

362 SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 14, 1881.

Continued as per stipulation.

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 28th day of November, A. D. 1881, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *December* 9, 1881.

Continued on defendant's application.

363 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant.

The plaintiff, for her amended reply to the amended answer of the defendant herein filed, says—

1st. That she denies each and every allegation in said amended answer contained.

2nd. That the said so-called release and satisfaction in writing in the 3d defense in defendant's said amended answer set out was obtained from the plaintiff without any consideration whatever, and was and is inoperative and void.

3d. That at the county of Barbour, in the State of Kansas, on or about the 17th day of March, A. D. 1879, John W. Hillmon, the husband of this plaintiff and the person whose life was insured in and by the policy set out in plaintiff's petition, died from a gunshot wound produced by the accidental discharge of a gun in the hands of one John H. Brown; that on or about the 15th day of September, A. D. 1879, the date of the so-called release and satisfaction set out in defendant's 3d defense in its amended answer, the said defendant, by its duly authorized agents and other persons by the procurement of said defendant, falsely and fraudulently represented to this plaintiff that her husband, the said John W. Hillmon, was then still living and had been seen alive since his alleged death, on or about the 17th day of March, A. D. 1879, and that they could produce him, the said Hillmon, alive as aforesaid, and that the said John H. Brown would testify on the trial of any action brought to recover the amount due under or upon said policy that the said Hillmon was not dead, but was still living, and that the body which had been

364 produced and identified by her, the said plaintiff, as the body of her said husband was not the body of the said John W. Hillmon, but was the body of another and different person, and, to induce the plaintiff to believe the said false and fraudulent representations, and that the said Brown would testify as aforesaid, and to prevent her from suing on the policy mentioned in the petition herein and to induce her to surrender the same, procured the said John H. Brown, upon whose testimony the plaintiff was relying to establish the fact of the death of her said husband and her right to recover the amount of said policy, to make a statement in writing to the effect that the said John W. Hillmon was still living as aforesaid, and that the body which had been produced and identified by her as the body of her said husband was not the body of the said John W. Hillmon, but was the body of another and different person, who had been murdered by the said John W. Hillmon, and procured the said John H. Brown to state to this plaintiff that he would in any action brought on or under said policy testify as aforesaid, and that he would testify that the whole transaction relating

to the procurement of said policy and the alleged death of her said husband was a fraud, and that she was a party to said fraud; that on or about the said 15th day of September, A. D. 1879, the said defendant, by its duly authorized agents and other persons by its procurement, fraudulently represented to this plaintiff that unless she executed and delivered the release of the policy which is set out in the third defense of said defendant's amended answer they would prosecute her for conspiring with divers other persons to defraud said defendant out of the amount of said policy, and that upon the said testimony of the said Brown she would be convicted, but that they would save her from such prosecution if she made and delivered the re-
365 lease aforesaid; that the said plaintiff, being in ill health, was overcome by the said false and fraudulent statements and threats so made as aforesaid, and, relying upon the said false and fraudulent statements as to what the said Brown would testify to, and being thereby led and influenced to believe that the said Brown would testify as the defendant, its agents, and other persons by its procurement had represented, contrary to the truth and facts in the premises, and that she could not against such testimony of the said Brown recover the amount due her on said policy, was induced by said defendant, its agents and other persons acting in its behalf, to sign and deliver without consideration the so-called release and satisfaction set out in the 3d defense of the defendant's amended answer.

That the said representations so made by the said defendant, its agents, and other persons by the procurement and in the behalf of the said defendant at the time and times the same were made and at the time the said so-called release and satisfaction was signed by this plaintiff, were false and were known to be false by the said defendant, its said agents, and the said other persons making the same, and the same were made for the purpose and with the intention of defrauding this plaintiff of her right to recover the amount due her on and under the said policy.

L. B. WHEAT,
R. J. BORGHALTHAUS,
JOHN HUTCHINGS &
SAM'L A. RIGGS,
Att'ys for Plaintiff.

Endorsed: No. 3149. Sallie E. Hillmon, plaintiff, *vs.* The Connecticut Mutual Life Insurance Company, defendant. Amended reply to amended answer. Filed Jan'y 2, 1882. A. S. Thomas, clerk, by Geo. N. Holmes, deputy.

366 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

And now comes the defendant and moves the court here for an order requiring the plaintiff and her attorneys of record, to wit, L. B. Wheat, John Hutchings, R. J. Borgolthaus, and Samuel A. Riggs, to give further and additional security for costs herein, for the reason, first, that the security heretofore given is wholly inadequate and insufficient; that A. J. Phillips, security for costs therein, is wholly insolvent.

Second. Because the said attorneys are directly and pecuniarily interested in the result of said suit and are abundantly able to give security for costs herein.

That since the decision of the application heretofore made in this action for additional security for costs a large amount of costs have already accrued and much more costs and expenses will necessarily be incurred by the defendant in the preparation and trial of this action.

J. W. GREEN &
GEO. J. BARKER,
Att'ys for Def't.

Endorsed: No 3149. Sallie E. Hillmon *vs.* The Connecticut — Life Insurance Company of Hartford, Connecticut. Motion for additional security for costs. Filed June 13, 1882. A. S. Thomas, clerk, by Geo. N. Holmes, deputy.

367 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 5th day of June, A. D. 1882, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *June* 14, 1882.

The defendants' motion to require the plaintiff to give additional security for costs came on to be heard and was argued by counsel; on consideration whereof it is ordered by the court that said motion be, and is hereby, overruled; to which ruling of the court the defendants then and there excepted.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 3149.

Now comes the plaintiff in the above-entitled actions, by L. B. Wheat, John Hutchings, S. A. Riggs, and R. J. Borgalthaus, her attorneys, and the defendants, by J. W. Green and Geo. J. Barker, their attorneys; and, it appearing to the court that the above-entitled actions are of like nature and relative to the same question, and to avoid unnecessary cost and delay, and that it is rea-
368 sonable to do so, it is ordered by the court that said actions be, and the same are hereby, consolidated for trial; to which ruling and decision of the court the defendants then and there duly excepted. And to try the issues joined comes a jury, to wit, R. B. McClure, Thomas White, James M. Walthal, William Stockebrand, E. H. Hutchings, Leonard Bradbury, J. T. Fulton, Daniel Horville, Wm. Lyons, J. S. Todd, John P. Gleich, and Samuel Kieser, twelve good and lawful men of the body of the district of Kansas, who being duly empaneled and sworn to well and truly try the matters submitted to them in this action and a true verdict give according to the law and evidence, *and* thereupon the trial of this case is proceeded with; and, the trial not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *June* 15, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

369 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 16, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *June* 17, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until Monday.

370 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *June* 19, 1882.

Now come the parties herein, same as on Saturday last; and, the

jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 20, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

371 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 3149.

WEDNESDAY, *June* 21, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *June* 22, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

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SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *June* 26, 1882.

Now come the parties herein, same as on Friday last; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 27, 1882.

Now come the parties herein, same as on yesterday; and, the

jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

373 SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *June* 28, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *June* 29, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

374 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 30, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *July* 1, 1882.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and the jury, having heard the evidence, arguments of counsel, and instructions of the court, retire
375 under the charge of a sworn bailiff for deliberation; and the jury having been kept together until it satisfactorily appears that there is no probability of their agreeing, it is ordered by the court that they be, and are hereby, discharged.

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE — OF HARTFORD, CONN. }

And now, at this day, comes the defendant and moves the court here for an order requiring the plaintiff to give additional security for costs in this action, for the reasons following:

1st. That the sureties on the undertaking for costs in said action, as well also said plaintiff, are wholly insolvent, and the security given wholly inadequate.

2d. Because said sureties are all non-residents of the State of Kansas.

3. Because the attorneys of record of said plaintiff own an interest therein and are pecuniarily interested therein and in the result thereof.

GEO. J. BARKER &
J. W. GREEN,
Att'ys for Def't.

Endorsed: No. 3149. Sallie E. Hillmon *vs.* The Connecticut Mutual Life Ins. Company. Motion for additional security for costs. Filed Nov. 29, '82. A. S. Thomas, clerk, by F. E. McCrary, D. C.

376 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 27th day of November, A. D. 1882, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *November* 29, 1882.

Continued by consent, including motion for additional security for costs.

377 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 4th day of June, A. D. 1883, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 8, 1883.

The defendant's motion for additional security for costs in said

actions came on to be heard and was argued by counsel; on consideration whereof it is ordered by the court that plaintiff, within ninety days from this time, give security for future costs of the officers of this court, to be approved by the clerk. Continued.

378 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE CO. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE CO. OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *Oct.* 9, 1883.

Now comes said plaintiff herein, by L. B. Wheat, her attorney, and on her motion the time in which she was heretofore required to give security for certain costs herein is extended to the first day of November next.

In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Pl't'ff,
vs.
MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant. } No. 3147.

SALLIE E. HILLMON, Pl't'ff,
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant. } No. 3149.

SALLIE E. HILLMON, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY. } No. 3148.

I hereby enter myself as security for and promise to pay all costs in the above-entitled actions which may accrue to any of the officers of this court subsequently to the 8th day of June, A. D. 1883, and in default of payment by the plaintiff of said costs I hereby agree and stipulate that execution may issue against my property
379 for any such costs taxed against said plaintiff.

Dated this eighth day of October, A. D. 1883.

WM. T. SINCLAIR.

Approved.
A. S. THOMAS, *Clerk.*

Endorsed: Nos. 3147, 3148, 3149. Sec. for costs. Filed Oct. 10, 1883. A. S. Thomas, clerk.

UNITED STATES OF AMERICA, *District of Kansas,* } *sct:*

In U. S. Circuit Court.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE CO. OF NEW YORK, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INS. COMPANY, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE CO.

STATE OF KANSAS, *County of Douglas,* } *sct:*

William T. Sinclair, being duly sworn, on his oath deposes and says that he is security for costs in the above consolidated cases under the order made at the June term, A. D. 1883, of said court, and that he is worth the sum of ten thousand dollars over and above his debts, liabilities, and exemptions, and that said values are in real estate situate in the county of Douglas and State of Kansas; and further he saith not.

WM. T. SINCLAIR.

Subscribed & sworn to before me this 1st day of November, A. D. 1883.

[SEAL.] CHAS. CHADWICK,
Notary Public, Douglas County.

Com. expires Sept. 7, 1887.

380 Endorsed: Nos. 3147, 3148, 3149. Sallie E. Hillmon *vs.* The Mutual Life Ins. Co. of New York *et als. Instification* of surety. Filed Nov. 1, 1883. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

In the Circuit Court of the United States for the District of Kansas.
November Term, A. D. 1883.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant.

It is hereby stipulated and agreed that the above cases be,

and the same are hereby, continued until the next term of the said court.

SALLIE E. HILLMON, *Pl'ff*,
By R. J. BORGALTHAUS, S. A. RIGGS,
L. B. WHEAT & JNO. HUTCHINGS,
Her Att'ys.
J. W. GREEN AND GEO. J. BARKER,
Att'ys for said Defendants.

Endorsed: No. 3147. Sallie E. Hillmon *vs.* The N. Y. Ins. Co. *et al.* Stipulation for continuance. Filed Nov. 26, 1883. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held in the city of Topeka, in said district, on Monday, the 26th day of November, A. D. 1883, proceedings were had and appear of record in words and figures fol-
381 lowing, to wit:

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN. } 3149.

MONDAY, *Nov.* 26, 1883.

Continued.

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 24th day of November, A. D. 1884, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
CON. MUTUAL L. INS. CO. } 3149.

FRIDAY, *Nov. 28th*, 1884.

Set for first Monday in March.

382 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

Now, at this day, comes the said defendant and moves the court for an order setting aside and vacating an order heretofore made in this cause, to wit, at the June term of this court, A. D. 1882, consolidating the said cause with that of Sallie E. Hillmon *vs.* The Mutual

Life Insurance Company of New York, being cause No. 3147 on the docket of this court, and Sallie E. Hillmon *vs.* The New York Life Insurance Company, being cause No. 3148 on the docket of this court, for the reason that said causes cannot by law be consolidated.

The said defendant also demands a separate trial of its action herein.

J. W. GREEN,
Att'y for Plaintiff.

Endorsed: No. 3149. Sallie E. Hillmon *vs.* The Connecticut Mutual Life Insurance Company. Motion. Filed June 4, 1885. A. S. Thomas, clerk.

383 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 1st day of June, A. D. 1885, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 5, 1885.

The defendant's motion, herein filed June 4, 1885, to set aside and vacate an order made in this cause consolidating it with other causes therein named for trial and for a separate trial, came on to be heard, and was argued by counsel; on consideration whereof the court doth overrule said motion; to which ruling and decision of the court the defendant duly excepted and excepts.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

It is ordered by Hon. Samuel F. Miller, presiding justice, that these actions be tried before Hon. D. J. Brewer, sitting apart for that trial; and thereupon these actions came on for trial in
384 their order together.

Now comes the plaintiff in the above-entitled actions by L. B. Wheat, John Hutchings, S. A. Riggs, and R. J. Borgholthaus,

her attorneys, and the defendants by J. W. Green and Geo. J. Barker, their attorneys; and said entitled action having been heretofore consolidated for trial, and to try the issues joined come a jury, to wit, B. M. Tanner, J. P. G. Creamer, C. O. Knowles, H. D. Shepard, Nelson Giles, Jr., R. H. Stott, G. W. Greever, Wm. M. Nace, Joseph Kleinfield, Wm. M. Hamm, H. A. Cook, and P. B. Maxon, twelve good and lawful men of the body of the district of Kansas, who being duly empanelled and sworn to well and truly try the matters submitted to them in this action and a true verdict give according to the law and evidence, *and* thereupon the trial of this case is proceeded with; and, the trial not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *June* 6, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanelled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

385 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *June* 8, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE — OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 9, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *were* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

386 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *June* 10, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCF COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *June* 11, 1885.

Now come the parties herein, same as on yesterday; and, the

jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

387 SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 12, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *June* 13, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

388 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *June* 15, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 16, 1885.

Now come the parties herein, same as on yesterday; and, the jury empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

389 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *June* 17, 1885.

Now come the parties herein, same as on yesterday; and, the

jurors empanneled herein being called and all being present, the trial of this cause is proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *June* 18, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

390 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *June* 19, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *June* 20, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanneled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

391 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *June* 22, 1885.

Now come the parties herein, same as on yesterday; and, the jurors empanelled herein being called and all being present, the trial of these causes *are* proceeded with, and, not being concluded at the hour of adjournment, the jurors are admonished by the court as to their duties herein and the further hearing postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *June* 23, 1885.

Now come the parties herein, same as on yesterday; and, the

jurors empanelled herein being called and all being present, the trial of these causes *are* proceeded with, and the jury, having heard the evidence, arguments of counsel, and instructions of the court, retire under the charge of a sworn bailiff for deliberation.

392 SALLIE E. HILLMON *vs.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON *vs.* THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *June* 24, 1885.

Now come the parties herein, same as heretofore; and the jurors empanelled herein, come- into open court under charge of their sworn bailiff, are called and are all present, and, after having been kept together until it satisfactorily appears that there is no probability of their agreeing, it is ordered by the court that they be, and are hereby, discharged.

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 23rd day of November, A. D. 1885, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *Nov.* 27, 1885.

Continued by consent.

393 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 22nd day of November, A. D. 1886, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *January* 22, 1887.

Continued by consent of counsel.

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 28th day of November, A. D. 1887, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *January* 16, 1888.

Motion of W. T. Sinclair to be discharged from further security for costs in the foregoing cause is by leave of court withdrawn.

394 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant.

The defendant, The Connecticut Mutual Life Insurance Company, moves, asks, and requests the court to vacate and set aside the order heretofore made consolidating this case for trial with two other cases, and asks and requests a separate trial hereof.

CHARLES S. GLEED,
Att'y for Def't.

Endorsed: No. 3149. Sallie E. Hillmon *vs.* The Conn. Mutual Life Ins. Company. Motion. Filed Feb. 29, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy. Chas. S. Gleed, att'y for def't.

395 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *Feb.* 29, 1888.

This day the three causes above named coming up for trial in pursuance of the order heretofore made by this court requiring the same to be tried at one and the same time and as one cause, and the parties thereto appearing by counsel, thereupon each of the said named defendants filed its motion asking the court to set aside the order heretofore made requiring the causes to be tried as one and asking that each case be tried separately; and the said motions, be-

ing submitted to the court, were by the court overruled, it being ordered that, in pursuance to the order heretofore made, the causes should be tried as one cause; to which rulings and order each of the said defendants at the time duly excepted. And thereupon, by direction of the court, a jury was empanelled for the trial of said causes, the several defendants claiming the right to challenge three persons peremptorily for each defendant; which claim was denied, the court ruling that but three peremptory challenges could be exercised by the defendants as a whole; to which ruling each of the said defendants at the time duly excepted. And, after three parties called into the jury-box had been peremptorily challenged by counsel for defendants, each of said defendants asked to be permitted to challenge one or more jurors peremptorily, which
396 request was refused by the court; to which ruling each of the said defendants at the time duly excepted. And after the defendants had challenged three parties peremptorily, there being in the box twelve good men, to wit, Samuel Kozier, G. W. Coffin, James Rood, Jacob Moon, J. S. Bouton, A. S. Davidson, H. S. Miller, Riley Elkins, J. S. Earnest, J. W. Farnsworth, Enoch Chase, and Furman Baker, against whom no challenges for cause existed or were made by either plaintiff or defendants, the same were duly sworn as the jury in said causes, and thereupon the opening statements for the respective parties were made to the jury, upon the conclusion of which the court adjourned until 9.30 a. m. of Thursday.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *March* 1, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

397 SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *March* 2, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *March* 3, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until Monday next.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

398 SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *March* 5, 1888.

Now come the parties herein, same as on Saturday last; and, all the jury being present, the trial hereof is proceeded with, and, the

trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *March* 6, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial hereof not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
399 THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *March* 7, 1888.

Now come the parties herein, same as yesterday; and thereupon, with leave of court, plaintiff amends her petitions herein, to which defendants except; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *March* 8, 1888.

Now come the parties herein, same as yesterday; and, all the jury

being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
400 THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *March* 9, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *March* 10, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until Monday.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *March* 12, 1888.

Now come the parties herein, same as on Saturday last;
401 and, all the jury being present, the trial hereof is proceeded

with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *March* 13, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *March* 14, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof —.

402 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *March* 15, 1888.

Now come the parties herein, same as yesterday; and, all the jury

being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

FRIDAY, *March* 16, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

403 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

SATURDAY, *March* 17, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until Monday next.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON.
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *March* 19, 1888.

Now come the parties herein, same as on Saturday last; and, all

the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

404 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

TUESDAY, *March* 20, 1888.

Now come the parties herein, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and, the trial not being concluded at the hour of adjournment, the further hearing hereof is postponed until to-morrow.

405 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

WEDNESDAY, *March* 21, 1888.

Now come the parties, same as yesterday; and, all the jury being present, the trial hereof is proceeded with, and the jury having heard the evidence and arguments of counsel, and being instructed by the court, retire for deliberation under charge of an officer duly sworn, and the jury, having agreed upon their verdicts, are duly conducted into court and render their verdicts herein in the words and figures following, to wit:

406 In the Circuit Court of the United States for the District of Kansas.

In the case of—

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

We, the jury in this action, find for the plaintiff and assess her

damages against the defendant at the sum of seven thousand five hundred and thirty dollars ($7,530).

G. W. COFFIN, *Foreman.*

And thereupon, on request of the defendants, the jury are duly polled, and each of them duly answers as to each of said verdicts respectively that it is his verdict, and thereupon the jury are discharged.

407 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant.

Now comes the said defendant and moves the court to vacate and set aside the verdict and judgment heretofore rendered in the above-entitled action and grant the said defendant a new trial therein for the following reasons, to wit:

1. Misconduct of the plaintiff in the trial of said action.
2. Misconduct on the part of the jury.
3. Because said verdict and judgment *is* contrary to the evidence.
4. Because said verdict and judgment *is* contrary to law.
5. Because of error of law occurring at the trial of said action and duly excepted to by the defendant at the time.
6. Newly discovered evidence material to the defendant which it could not by reasonable diligence have discovered upon the trial of this action.
7. Misconduct of plaintiff's attorneys on the argument of said case to the jury.

CHAS. GLEED,
Attorney for Defendant.

Endorsed: No. 3149. Sallie E. Hillmon *vs.* The Connecticut Mutual Life Insurance Company. Motion for a new trial. Filed March 21, 1888. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

408 SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

THURSDAY, *March* 22, 1888.

Now come the parties herein, same as yesterday. These causes

coming up before the court, counsel for plaintiff moved for judgment against the several defendants upon the verdicts rendered, and defendants asked that action thereon be postponed until the motions for new trial had been heard and disposed of, and further asked that time be granted for the preparation and settlement of a bill of exceptions; and thereupon the court ordered that the time for settling and signing the bill of exceptions be extended to June 28th, 1888; that defendants have until May 15th, 1888, to prepare and serve upon plaintiff a copy of their bill of exceptions; that plaintiff have until June 20th to suggest amendments and serve copy thereof on defendants, and that the bill and amendments be submitted on June 28th, at Dubuque, Iowa, for settlement & signing, the same, when so signed and filed, to have the same force and effect as though filed this day. It was further ordered by the court that defendants have leave to file an amended motion for new trial by Monday, March 26, and to file and serve upon plaintiff affidavits in support thereof by April 15th, 1888, the plaintiff having leave to file & serve counter-affidavits by May 15th, the motion for new trial to be fully submitted on June 28th, at Dubuque, Iowa, and all further action on motion for judgments on the verdicts to be suspended until that date, when same will be heard in connection with motion for new trial.

409 In the Circuit Court of the United States for the District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant.

} Consolidated Case.

Be it remembered that this trial came on to be heard on the 29th day of February, A. D. 1888, in the circuit court of the United States sitting in and for the district of Kansas, at the November term thereof, A. D. 1887, and thereupon each of the defendants in the several cases heretofore consolidated by the order of this court, to wit, on the — day of ——, A. D. 18—, at the —— term of the said court, filed their several motions in said cause; which said motions are in the words and figures following—that is to say:

SALLIE E. HILLMON, Plaintiff,
vs.
THE NEW YORK MUTUAL LIFE INSURANCE COMPANY, Defendant.

The defendant, The New York Mutual Life Insurance
410 Company, moves, asks, and requests the court to vacate and set aside the order heretofore made consolidating this case for trial with two other cases, and asks and requests a separate trial thereof.

J. W. GREEN,
Attorney for said Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.

The defendant, The Mutual Life Insurance Company of New York, moves, asks, and requests the court to vacate and set aside the order heretofore made consolidating this case for trial with two other cases, and asks and requests a separate trial thereof.

GEORGE J. BARKER,
Attorney for said Defendant.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant.

The defendant, The Connecticut Mutual Life Insurance Company, moves, asks, and requests the court to vacate and set aside the order heretofore made consolidating this case for trial with two other cases, and asks and requests a separate trial thereof.

CHARLES S. GLEED,
Attorney for said Defendant.

And it appears that at the —— term of this court the following order consolidating said causes for trial had been entered, to wit:

UNITED STATES OF AMERICA, *District of Kansas*, } *ss:*

At a term of the circuit court of the United States of
410½ America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 5th day of June, 1882, proceedings were had and appear on record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 3149.

WEDNESDAY, *June 14th*, 1882.

Now comes the plaintiff in the above-entitled actions, by L. B. Wheat, John Hutchings, S. A. Riggs, and R. J. Borgalthaus, her attorneys, and the defendants, by J. W. Green and George J. Barker, their attorneys; and, it appearing to the court that the above-entitled actions are of like nature and relative to the same question, and to avoid unnecessary cost and delay, and that it is reasonable to do so, it is ordered by the court that said actions be, and the same are hereby, consolidated for trial; to which ruling and decision of the court the defendants then and there duly excepted. And
411 to try the issues joined comes a jury, to wit, R. B. McClure, James M. Wathal, E. H. Hutchings, J. T. Fulton, W. M. Lyons, John P. Gleich, Thomas White, William Stockebrand, Leonard Bradbury, Daniel Horville, J. S. Todd, Samuel Kieser, twelve good and lawful men of *a* body of the district of Kansas, who being duly empanelled and sworn to well and truly try the matter submitted to them in this action and a true verdict give according to the law and evidence, *and* thereupon the trial of this case is proceeded with, and, the trial not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein and the future hearing postponed until to-morrow.

Thereupon the court overruled the present motion to set aside said order of consolidation, it being ordered that, in pursuance to the order heretofore made, the causes should be tried as one case; to which ruling and order the defendants and each of them duly excepted.

Be it further remembered that in the empaneling of the jury the defendants each claimed the right to challenge peremptorily three jurors on behalf of each defendant. Thereupon the court ruled that, the cases having been consolidated, the defendants were entitled to three peremptory challenges only; to which ruling of the court each of the defendants then and there duly excepted.

Be it further remembered that when the defendants were called upon to exercise their peremptory challenges the Mutual Life Insurance Company challenged one juror peremptorily, the New York Life Insurance Company challenged one juror peremptorily,
412 and the Connecticut Mutual Life Insurance Company challenged one juror peremptorily; and thereupon the court held that those challenges exhausted the right of peremptory challenge

on the part of the defendants, and each of the said defendants claimed and desired to exercise the right of challenging peremptorily one or more of said jury in addition to the three already challenged; which claim was refused by the court, and to which ruling each of the defendants at the time duly excepted.

Be it further remembered that thereupon the plaintiff, to sustain the issues in her behalf, introduced in evidence the several policies of insurance upon the life of John W. Hillmon issued by the defendant companies and declared upon by plaintiff in the several actions on trial; also evidence tending to show that formal proofs of death had been furnished these companies, as required by the terms of said policies; also evidence tending to show that the said John W. Hillmon in March, 1879, was travelling through Southern Kansas, in company with one John H. Brown, in search of a location for a cattle ranch; that on the 18th day of March, 1879, the said parties were in camp on Crooked creek, in Barbour county, Kansas; that on the evening of said day said Brown notified parties living in the neighborhood of the camp that he had accidentally shot his companion, John W. Hillmon, causing his instant death; that the parties so notified went to the camp and found a dead body by the campfire, said by Brown to be the body of Hillmon; that said body was removed the next day to Medicine Lodge, the county-seat of Barbour county, and, after an inquest thereon, was buried in the grave-yard at that place; that, upon information of said occurrence being sent to Lawrence, Kansas, where plaintiff resided, as well as the agents of the defendant companies, the plaintiff sent Levi Baldwin and Alva Baldwin to Medicine Lodge, and the defendants sent
413 Theo. Wiseman and Samuel Walker; that upon the arrival of these parties at Medicine Lodge the body was disinterred and taken to Lawrence Kansas; that an inquest was there held on the body, after which the same was buried by the plaintiff in the cemetery at Lawrence, Kansas; that plaintiff and others who knew John W. Hillmon testified that said body so brought to Lawrence was the body of said John W. Hillmon; also evidence tending to identify the said body as being that of John W. Hillmon; also evidence tending to show the pecuniary condition and ability of said Hillmon at the time he took out the insurance upon his life; also evidence tending to show when, how, and under what circumstances the releases signed by plaintiff were given, and that same were without consideration.

Be it further remembered that, touching the affidavit made by John H. Brown and introduced as evidence for the purpose of contradicting him, a large amount of evidence was introduced by both parties tending to show the circumstances leading up to the making of said affidavit, the defendants claiming that the affidavit had been voluntarily signed & sworn to by Brown, and the plaintiff claiming that Brown had been induced to make it by the representations of Buchan made directly to him & also through his brother, the said Buchan himself testifying that he had demanded & received compensation from the defendants for the procuring said affidavit, and also the execution of the written releases signed by plaintiff; and

thereupon the plaintiff, to further sustain the issues upon her part, read in evidence from the deposition of John H. Brown as follows:

Q. 23. What were you next employed by Hillmon to do?

A. To take a trip down to Southern Kansas to open up a cattle ranch.

Q. 24. Did you take that trip, and with whom?

A. I taken that trip with John W. Hillmon.

414 Q. 25. When and from where did you start?

A. We started from Lawrence, Kansas, in the year 1878, about a week or ten days before Christmas of that year.

Q. 26. How did you go?

A. Went by railroad to Wichita, Kansas. From Wichita we went in a spring wagon with a pair of horses.

Q. 27. Where did you go to from Wichita?

A. Medicine Lodge, in Barbour county, Kansas.

Q. 28. From Medicine Lodge, Barbour county, Kansas, where did you go to?

A. To Sun City—northwest, I would call it.

Q. 29. From Sun City where did you go?

A. Went from there to a town on the Arkansas river and on the Atchison, Topeka & Santa Fé railroad. I can't call the name.

Q. 30. From that town on the Atchison, Topeka & Santa Fé railroad where did you go?

A. To the Great Bend or Big Bend—a town named by that name; from there on to Hutchinson and several towns—I don't remember the names—to Wichita.

Q. 31. About what time did you arrive at Wichita?

A. About the 18th or 20th of January.

Q. 32. Who went with you on that trip?

A. John W. Hillmon.

Q. 33. What was the purpose of that trip?

Objected to by defendants because it is incompetent, irrelevant, and immaterial. Overruled, and exception saved.

A. The hunting up and locating a cattle ranch.

Also from the cross-examination of said John H. Brown, as follows:

415 Q. 338. On the 5th day of April, A. D. 1879, in the office of George J. Barker, in Lawrence, Kansas, were you not shown a postal card from Griffin, Texas, directed to Mr. Brocklesby, city marshal of Lawrence, inquiring if a man by the name of Hillmon lived in Lawrence, and stating in substance that he had a difficulty with a train of cattle; also stating that Hillmon formerly lived near Grasshopper, and if you were not asked if Hillmon was ever at Griffin, Texas, and if in reply thereto you did not state that Hillmon had been at Griffin, Texas, and that you was with him there?

Objected to by plaintiff's counsel, first, because the question calls for immaterial, irrelevant, and incompetent testimony; second, because the subjects of inquiry are not proper subjects of cross-ex-

amination; third, because the question is leading; fourth, because the question calls for the oral statement of the contents of a written instrument, which is not the best evidence of such contents; fifth, the question contains inquiries as to several separate and distinct subjects; sixth, if the question is asked for the purpose of obtaining an answer from the witness to be contradicted it is incompetent, because the subjects of inquiry are immaterial to the issues in this case. Sustained, and exception saved by defendants.

Q. 1244. State if the following is the statement made and prepared on the 4th day of September, 1879, at your brother's residence, situated near Parkville, Missouri, and which you afterward saw at the office of Francis M. McDonald, at Parkville, Missouri, and which you afterwards tore up and put in the stove at the office of W. J. Buchan, in Wyandotte, Kansas:

"STATE OF MISSOURI, } ss:
County of Platte, }

John H. Brown, of lawful age, being first duly sworn ac-
416 cording to law, deposes and says:

My name is John H. Brown; my age, thirty years. I am acquainted with John W. Hillmon, also Mrs. S E. Hillmon and Levi Baldwin, of Douglas county, Kansas; have known John W. Hillmon for about five years; have been with him a good deal for the past two years; was with him last March, at Wichita and on the trip from there to and around Medicine Lodge, in Barbour county, Kansas, where it is claimed that I killed him on the 17th of March, 1879. Along about the 10th of December, 1878, John W. Hillmon and Levi Baldwin talked about and entered into a conspiracy to defraud the New York Life Insurance Company and the Mutual Life — of New York out of some money, to be obtained by means of effecting a policy or policies on the life of said John W. Hillmon. Baldwin was to furnish the money to pay the premiums and to keep up the policies in case they had to be renewed. Our original arrangement was to get Hillmon's life insured for fifteen thousand dollars, but it was afterwards changed to twenty-five thousand dollars. Hillmon and myself were to go off southwest from Wichita, Kansas, ostensibly to locate a stock ranch, but in fact to in some way *to* find a subject to pass off as the body of John W. Hillmon, for the purpose of obtaining the insurance money aforesaid. We had no definite plan of getting a subject, but to in some manner get one. The final termination of the matter was the last idea thought of. Our first trip out from Wichita—the last days of December—while the snow was on the ground, we expected to find a subject that would appear to be Hillmon frozen to death, and that could not be identified only by the clothes and papers found on it, and so I could pass — off as Hillmon. We went from Wichita to Medicine Lodge; then direct to Sun City; from there to Kinsley; from there to Great Bend, on the Santa Fé road; then
to Larned, and on to Wichita via Hutchinson. Hillmon
417 and myself were entirely alone on that trip. Iliff, of Medicine Lodge, saw Hillmon on this trip. We put up at

his stable. I then staid at Wichita until the 4th of March. Hillmon in the meantime went up to Lawrence to see his wife and to get some more money. He returned about the 1st of March, and on the 5th we left on our second trip. We went due west to Cowskin creek, then west to Harper City, then to Medicine Lodge, on by Sun City and beyond some miles; then we turned northeast down Medicine river to a camp on Elm creek about eighteen miles north of Medicine Lodge, where Hillmon is claimed to have been killed. We got there about an hour before sundown and staid in camp until the next evening. We overtook a stranger on this trip the first day out from Wichita, about two or two and one-half miles from town, who Hillmon invited to get in and ride, and who he (Hillmon) proposed to hire and work for him on the ranch as proposed to be located. This man was with us during all this trip. Hillmon proposed to me that this man would do for a subject to pass off for him. I told him and contended with him that the man would not do to pass off for him, giving him various reasons why the man would not answer his description, and complained and objected because his proposition was to take the man's life, and I protested and said that was going beyond what we had agreed and something that I had never before thought of, and was beyond my grit entirely; but Hillmon seemed to get more deeply determined and more and more desperate in the matter. Pains were taken not to have more than two of us seen together in the wagon; sometimes one and then the other would be kept back out of sight. On his trip to Lawrence Hillman was vaccinated; his arm was quite bad. Hillmon kept at that man until he let him vaccinate him, which he did, taking his pocket knife and using virus from his own arm for the purpose. He also traded clothes with him, Hillmon first giving
418 him a change of underclothing; then traded suits, the one he was killed in. The suit he was buried in was a suit Hillmon traded with Baldwin for. This man appeared to be a stranger in the country, a sort of an easy-go-long fellow, not suspicious or very attentive to anything. His arm became very sore, and he got quite stupid and dull. He said his name was either Berkley or Burgis, or something sounding like that. We always called him Joe. He said he had been around Fort Scott awhile, and also had worked about Wellington or Arkansas City. I don't know where he was from, nor where his home or friends were. I did not see him at Wichita that I know of. I had but very little to say to the man and less to do with him. He was taken in charge by Hillmon and yielded willingly to his will. I dreaded what I thought was to be done, and kept out of having any more to do with him than possible. I frequently remonstrated with Hillmon and tried to deter him from carrying out his intentions of killing the man. The next evening, after we got to the camp last named, the man Joe was sitting by the fire. I was at the hind end of the wagon, either putting feed in the box for the horses or taking a sack of corn out, when I heard a gun go off. I looked around and saw the man was shot, and Hillmon was pulling him away around to keep him out of the fire. Hillmon changed a day book from his own coat to Joe's and said to me everything was

all right and in shape just as he wanted it, and that I need not be afraid but it would be all right. He told me to get on a pony and go down to a ranch about three-quarters of a mile and get some one to come up. He took Joe's valise and started north. This was about sundown. We had no arrangements about communicating with each other. He first proposed to do so, but I told him I did not want to know where he was; that in case I should I might find out in some other way. I have never heard a word from him
419 since. At Lawrence Mrs. Hillmon gave me to understand that she knew where Hillmon was, and that he was all right. The man over whom an inquest was held at camp, afterward at Medicine Lodge, and at Lawrence, Kansas, was the man Joe Burgis, or Berkley, killed by Hillmon as related above, and John W. Hillmon I believe to be still alive; at least he left our camp and went north, as stated above, after killing Joe. Hillmon said he would assume the name of William Marshall. Baldwin's wife and Mrs. Hillmon know all about this. In my testimony at Lawrence I stated the route taken as above described, but the man who I described as being in camp with us, and who I said went off with some wagons, was Joe, the man killed. I afterwards, some time in August, 1879, made four affidavits under great importunities from Baldwin, who came after me three different times, the last time persuading me to go with him to Kansas City, where Honorable Samuel Riggs insisted on my signing them. I don't think Mr. Riggs is aware of the facts in this case, nor the other counsel in the case. I make the above statement in this Hillmon case as the full and true facts in the case, regretting the part that I have taken in the affair."

The last question is objected to by counsel for the plaintiff for the following reasons: First, because it calls for testimony which is immaterial and irrelevant to the issues in this case; second, because it is not a cross-examination concerning any matter inquired about by the plaintiff in the examination-in-chief; third, because no conversations or statements held or made by the witness and W. J. Buchan or either of them when the plaintiff was not present or to which she has not given her assent are competent or admissible against her; fourth, because it is sought by the question and answer to prove the contents of a written document which is now in existence and within the control of the defendant in the action, which document
420 must be produced to the witness and identified by him and then offered as the best evidence of its contents; fifth, because it is not competent to prove in this way that the statement was made under oath, the original statement being in existence and under the control of the defendant; sixth, because the question calls for confidential communications between the witness and his attorney, W. J. Buchan, which are privileged and to contradict which the said W. J. Buchan cannot be called as a witness; seventh, because the evidence called for is otherwise incompetent. Sustained, and exception saved by defendants.

A. Part of that I remember stating, and part I don't remember anything about.

Q. 1245. Did you not sign this statement in the presence of and swear to it before Francis M. McDonald, at his office, in Parkville, Missouri, on the 4th day of September, 1879?

Objected to on same grounds as question last preceding. Sustained, and exception by defendants.

A. I wouldn't be positive now whether I did or not.

Q. 1246. Did you or did you not sign this statement in the presence of and swear to it before Francis M. McDonald, at his office, in Parkville, Missouri, on the 4th day of September, 1879, or at any other time?

Objected to by plaintiff on the same ground as question No. 1244, and for the further reason that the question has been repeatedly asked of this witness and fairly answered. Sustained, and exception saved the defendants.

A. I wouldn't be positive whether I did or not, at McDonald's office, and if I didn't, I didn't do it anywhere else.

Q. 1247. Did you sign this statement in the presence of
421 Francis M. McDonald and W. J. Buchan, at the office of McDonald, at Parkville, Missouri, on the 4th day of September, 1879, or at any other time?

Objected to by the plaintiff on the same grounds as question last preceding. Sustained, and exception saved by defendants.

A. I wouldn't be positive now whether I did or not.

Q. 1253. Did not this statement, the statement referred to in question No. 1244, have attached to it the following words at the time you tore it up and put it in the stove at Buchan's office: "Subscribed in my presence and sworn to before me this 4th day of September, A. D. 1879—my term expires on the 2nd day of April, 1883—Francis M. McDonald, notary public"?

Objected to by plaintiff on grounds stated in objection to question No. 1244. Sustained, and *objection* saved by defendants.

Q. 1254. Did this statement that you tore up and put in the stove at Buchan's office, in the presence of Buchan and Mrs. Hillmon, have attached to it the words quoted in question No. 1253?

Objected to by plaintiff on same grounds as stated in objection to question No. 1244, and for the further reason that the same question has just been asked and fairly answered. Sustained, and exception saved by defendants.

Q. 1255. Did you examine it to see whether these words were attached to it?

A. No, sir.

Q. 1256. Did the statement which you tore up and put in the stove at Buchan's office, in the presence of Mrs. Hillmon, have the impression of a seal of any kind on it?

Objected to by plaintiff as incompetent for the reasons stated in

objection to question No. 1244. Sustained, and exception
422 saved by defendants.

Q. 1268. Does question No. 1244 of this deposition contain a correct statement of the contents of the paper or statement written by Buchan in your brother's house at Parkville, Missouri, on or about the 4th day of September, 1879, which was present on the same day in the office of Francis M. McDonald, in Parkville, Platte county, Missouri, at the same time you and W. J. Buchan were there, which paper or statement you afterwards tore up and threw into the stove in the office of said Buchan, in the city of Wyandotte, Kansas? If not, state wherein the statement contained in said question differs from the statement, above referred to, which you tore up in Buchan's office.

Here the notary is requested to read to the witness the statement contained in the quoted part of the said question, which he here does.

Objected to by plaintiff on the same grounds as stated in objection to question No. 1244. Sustained, and exception saved by defendants.

The objections to questions 1244 to 1268, inclusive, were sustained on the ground that it appeared that the original affidavit signed by Brown was in existence and in possession of defendants' counsel, and that therefore it should have been produced and shown to the witness, and that the copy in the deposition could not now be read to the jury whilst the original was at hand and capable of production; to which ruling the defendants excepted, and thereupon defendants' counsel for the present withdrew said questions and answers, with leave to again offer same. On the day following defendants' counsel offered to read said copy of said affidavit and the questions and answers based thereon to the jury; but the court held that the same could not be read unless the defendants produced the original affidavit; to which ruling the defendants duly excepted.

423 Be it further remembered that subsequently the original affidavit was produced by defendants' counsel and read in evidence to the jury.

Be it further remembered that thereupon the plaintiff, to further sustain the issues on her part, then produced as a witness Dr. N. Simmons, who, being first duly sworn, testified, among other things, as follows:

Dr. SIMMONS, a witness for the complainant.

Direct examination—questions by Mr. HUTCHINGS:

Q. Where do you reside?
A. In Lawrence, Kansas.
Q. How long have you resided in Lawrence?
A. I have resided in Lawrence and vicinity for nearly 20 years—since 1868.
Q. What is your occupation?

A. Practicing medicine.
Q. How long have you been practicing medicine?
A. Nearly 35 years.
Q. How long have you been practicing medicine in Lawrence, Kansas?
A. Since 1868.
Q. Were you acquainted with John W. Hillmon in his lifetime?
A. Yes, sir.
Q. When did you first become acquainted with him?
A. I think it was in 1872.
Q. Where?
A. In 1872 or 1873. I think it was in the winter, perhaps, of 1872, or possibly after, in the early part of 1873; I am not positive; it was about that time.
Q. Where was that?
424 A. That was in Jefferson county, just across the line from Douglas county.
Q. State if at that time you were residing in Jefferson county.
A. Yes, sir.
Q. On your farm?
A. Yes, sir.
Q. You have a farm there?
A. Yes, sir.
Q. How did you become acquainted with him?
A. Mr. Hillmon was taking care of a lot of cattle in the vicinity of my place, and I had a large quantity of hay to sell.
Q. Did that acquaintance continue until the time when he was alleged to have been killed?
A. Well, I saw him occasionally during that time.
Q. State if you were ever employed by him in the capacity of a physician.
A. I can't give the exact date, but perhaps in the year 1872 he met with an accident and had quite an injury on his face. In handling cattle in some way he received it; I could not tell how. I do not remember exactly how he received it—either by the kick of an animal or being thrown against a fence. He received a wound on his nose—in the center of the nose, running down across the eye—about an inch and a half long; something near that.
Q. On which side of the nose?
A. On the left side.
Q. Did he come to you for treatment?
A. Yes, sir.
Q. About how far up the nose from the end, from the lower end, of it was that injury?
A. Well, I think it was about the middle of the nose.
425 Q. Did this injury leave any visible scar, according to your recollection?
A. I never noticed whether it did or not.

Picture marked Exhibit "C" shown witness and witness asked:

Do you recognize that photograph as the picture of any party you have ever known?

Objected to by the defendants because it is incompetent, irrelevant, and immaterial. It is not shown that the picture is an original picture. It is not shown that the negative from which it was taken is the same as produced by the camera, without having been retouched or altered. It is incompetent to prove a photograph in that way. The authorities are that the artist who took the picture must be produced and show that he took the picture, and that it is a correct representation of the original of which it claims to be a picture. Objection overruled, and exception saved by each of the defendants.

A. Yes, sir.
Q. Of whom is that a picture?

Same objection. Overruled, and exception saved by each of defendants.

A. I think it is a picture of John W. Hillmon.

Photograph marked "Exhibit H" is shown witness and witness asked: Is that photograph last shown you a picture of any one you have ever known?

Same objection. Overruled, and exception saved by each of defendants.

A. Yes, sir.
Q. Of whom is that a picture?

Same objection. Overruled, and exception saved by each of the defendants.

A. I think it is a better picture than the other of John W.
426 Hillmon.

Two photographs endorsed on the back "O. P. S., March 2, 1888," shown witness and witness asked: Have you ever seen those photographs before?

A. Yes, sir.

Q. On the front-view picture I will call your attention to the mark on the nose. Will you please to state how the location of the mark on that nose corresponds with the position or location of the injury on the John W. Hillmon's nose which you treated?

Objected to as not being competent to prove it in that way. Let him state where the location was on the nose and where it is upon the photograph, and the jury can see just as well as this witness can tell. It is nothing that requires expert testimony.

Objection sustained.

Q. Are you able, from an observation of the picture in your hands, the front view of the dead man, to locate the point of injury to the nose which you were called upon to treat?

A. Practicing medicine.
Q. How long have you been practicing medicine?
A. Nearly 35 years.
Q. How long have you been practicing medicine in Lawrence, Kansas?
A. Since 1868.
Q. Were you acquainted with John W. Hillmon in his lifetime?
A. Yes, sir.
Q. When did you first become acquainted with him?
A. I think it was in 1872.
Q. Where?
A. In 1872 or 1873. I think it was in the winter, perhaps, of 1872, or possibly after, in the early part of 1873; I am not positive; it was about that time.

Q. Where was that?

424 A. That was in Jefferson county, just across the line from Douglas county.

Q. State if at that time you were residing in Jefferson county.
A. Yes, sir.
Q. On your farm?
A. Yes, sir.
Q. You have a farm there?
A. Yes, sir.
Q. How did you become acquainted with him?
A. Mr. Hillmon was taking care of a lot of cattle in the vicinity of my place, and I had a large quantity of hay to sell.
Q. Did that acquaintance continue until the time when he was alleged to have been killed?
A. Well, I saw him occasionally during that time.
Q. State if you were ever employed by him in the capacity of a physician.
A. I can't give the exact date, but perhaps in the year 1872 he met with an accident and had quite an injury on his face. In handling cattle in some way he received it; I could not tell how. I do not remember exactly how he received it—either by the kick of an animal or being thrown against a fence. He received a wound on his nose—in the center of the nose, running down across the eye—about an inch and a half long; something near that.
Q. On which side of the nose?
A. On the left side.
Q. Did he come to you for treatment?
A. Yes, sir.
Q. About how far up the nose from the end, from the lower end, of it was that injury?
A. Well, I think it was about the middle of the nose.

425 Q. Did this injury leave any visible scar, according to your recollection?

A. I never noticed whether it did or not.

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Objected to by the defendants because it is incompetent, irrelevant, and immaterial. It is not shown that the picture is an original picture. It is not shown that the negative from which it was taken is the same as produced by the camera, without having been retouched or altered. It is incompetent to prove a photograph in that way. The authorities are that the artist who took the picture must be produced and show that he took the picture, and that it is a correct representation of the original of which it claims to be a picture. Objection overruled, and exception saved by each of the defendants.

A. Yes, sir.

Q. Of whom is that a picture?

Same objection. Overruled, and exception saved by each of defendants.

A. I think it is a picture of John W. Hillmon.

Photograph marked "Exhibit H" is shown witness and witness asked: Is that photograph last shown you a picture of any one you have ever known?

Same objection. Overruled, and exception saved by each of defendants.

A. Yes, sir.

Q. Of whom is that a picture?

Same objection. Overruled, and exception saved by each of the defendants.

A. I think it is a better picture than the other of John W.
426 Hillmon.

Two photographs endorsed on the back "O. P. S., March 2, 1888," shown witness and witness asked: Have you ever seen those photographs before?

A. Yes, sir.

Q. On the front-view picture I will call your attention to the mark on the nose. Will you please to state how the location of the mark on that nose corresponds with the position or location of the injury on the John W. Hillmon's nose which you treated?

Objected to as not being competent to prove it in that way. Let him state where the location was on the nose and where it is upon the photograph, and the jury can see just as well as this witness can tell. It is nothing that requires expert testimony.

Objection sustained.

Q. Are you able, from an observation of the picture in your hands, the front view of the dead man, to locate the point of injury to the nose which you were called upon to treat?

Objected to as incompetent. Overruled, and exception saved by defendants.

A. I think so.

Q. Is there any mark on the nose of the picture referred to which indicates the place of that injury?

Objected to as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants. Witness may state where the injury was on Hillmon's nose, and the photograph is the best evidence as to where the defect is located.

A. I see a defect on the nose that would indicate that there was an injury or deformity of some kind.

427 Q. State whether that defect is located on the nose in the place compared with the place where the injury on Hillmon's nose occurred.

Same objection. Overruled, and exception saved by defendants.

A. Yes, sir; it is about the same point, I think, as near as could be located.

Q. Did you hear the testimony of Mr. Paddock—the deposition that was read on the trial this afternoon?

A. Yes, sir.

Q. What would be the probable result from a wound of the kind described by that witness, as to the immediate falling of the person injured?

Objected to as incompetent and irrelevant and immaterial. Sustained.

Redirect examination—questions by Mr. HUTCHINGS:

Pictures of the corpse shown witness and witness asked, What is your best judgment? What are these pictures of? Doctor, state to the jury what they are.

Objected to as incompetent and irrelevant and immaterial. Overruled, and exception saved by defendants. It is not shown that the photograph is an original picture or that it is a correct representation of the person whose picture was taken. It is not shown that the negative is the same as produced by the camera without retouching.

A. They seem to be the pictures of a corpse that is considerably decayed and so disfigured by decay——

Q. You stated that you might not say positively as to whether they were the pictures of any one that you ever knew. What is your best judgment in regard to the matter?

Same objection as to question last above objected to. Objection overruled, and exception taken by defendants.

428 A. I should not like to say they were a picture of anybody that I know.

Q. I do not ask you to say that. I ask, What is your best judgment, what is your best opinion, in regard to the matter?

Same objection. Overruled, and exception saved.

A. They may be the picture of Mr. Hillmon or they may not be. I could not say.

Q. Why are you not able to say or to express an opinion as to whose pictures those photographs are?

Objected to as incompetent, irrelevant, and immaterial. Overruled, and exception saved.

A. Simply because of the change in the natural appearance. There is no expression there that I can identify. The eyes are obliterated. That is why I cannot recognize them. The change is too extensive for my meager knowledge of him. If I had been much more intimately acquainted with him I might have done better in that line, probably.

Be it further remembered that thereupon the plaintiff, to further sustain the issues on her part, produced as a witness REUBEN BROWN, who, being first duly sworn, testified, among other things, as follows:

Direct examination:

Q. Were you acquainted with W. J. Buchan, an attorney of Wyandotte, in the year 1879?

A. Yes, sir.

Q. How long had you been acquainted with Mr. Buchan prior to that time?

A. As near as I can recollect, 15 or 20 years.

Q. Did you know John W. Hillmon in his lifetime?

A. No, sir.

429 Q. Had you ever seen him?

A. I only saw him once.

Q. Where was that?

A. That was on Main street, in Kansas City.

Q. When was that?

A. Well, I don't recollect what time of the year. I don't have any recollection what time of the year it was.

Q. Do you remember the circumstances of his alleged death in Barbour county, Kansas?

A. Well, yes, sir; I remember my brother telling me what had happened.

Q. Do you remember of hearing of an inquest that was held in Lawrence in which your brother was a witness?

A. Yes, sir.

Q. How soon after that did you see your brother, John H. Brown?

A. Well, it must have been a week or ten days afterwards; somewhere along about that.

Q. State where you saw him.

A. At my house.

Q. When did he come to your house?

A. I think it was about the last of March or first of April.

Q. How long did he remain at your house?
A. He staid there until the next day, in the afternoon, I think.
Q. Where did he start to from your house that afternoon?
A. I don't remember the place now. It was down on the Missouri river, where they were building a bridge.
Q. Did you see Mr. Buchan very soon after that?
A. Yes, sir.
430 Q. Where did you see him?
A. I saw him at his office, in Wyandotte.
Q. How came you to go to his office?
A. He wrote for me to come; that he wanted to see me.
Q. State what conversation you had with Mr. Buchan at that time, at his office.

Objected to by defendants as incompetent, irrelevant, and immaterial and hearsay. Overruled, and exception saved by defendants.

A. He told me—he asked me where my brother John was. I told him I didn't know. "Well," he says, "I want to know where he is; I want to see him;" and I told him that I didn't know, but that I could go and look for him.
Q. What was said about any trouble that he was in, if anything?

Objected to by defendants as incompetent, irrelevant, and immaterial and hearsay. Overruled, and exception saved by defendants.

A. Well, he said he had heard that he had got into trouble and he wanted to get him out of it; that he had been employed by my father and brother to get him out of this trouble, and he wanted I should hunt him up; and I told Buchan where he started to, and I said I would go down and hunt him up and bring him back, so he could have a talk with him. That is about the substance of the conversation. That is about what was said at that time.
Q. Where did you go from Mr. Buchan's office?
A. I went from there, I think, right straight down to Orrick, Missouri. I think I left his office and went right down to Orrick. On the way to the place my brother told me he was going, too.
Q. Where is Orrick?
A. It is 15 or 20 miles below Kansas City.
431 Q. When did you next see Buchan after that?
A. The next I saw him was at my house.
Q. Who came there with him?
A. A fellow by the name of Ward.
Q. Who was Ward?
A. He was the deputy sheriff, I think, of Wyandotte county, or constable. I don't recollect whether he was constable or deputy sheriff.
Q. Where was your brother at that time?
A. He was hauling lumber or wood—I forget which it was—about half a mile from where I lived.
Q. About what time of day did Buchan and Ward arrive at your house?
A. About ten o'clock, I should judge, in the morning.

Q. State how Buchan—how did he come over?
A. He came over in a buggy.
Q. State what transpired after he came over.
A. He asked me where Brother John was, and I told him.
Q. What did you tell him?
A. I told him he was hauling lumber or wood—I forget which it is now—from the mill to the railroad depot.
Q. Then where did Buchan go?
A. They went up to the mill, about half a mile from our house.
Q. Did they return?
A. Yes, sir.
Q. When they got back to your house what did they do?
A. They put their teams up and went and got dinner.
Q. Did you ask them to dinner?
A. Yes, sir.
432 Q. Well, what was done between the time they put up their teams and dinner time?
A. Well, Buchan and John were out in the lot talking.
Q. After dinner was there any conversation between Mr. Buchan and your brother John?
A. Yes, sir.
Q. Where was that conversation had?
A. They went up in the orchard.
Q. Where did they go from the orchard?
A. They came back into the barn lot.
Q. Did you have any conversation with Buchan there?
A. Yes, sir.
Q. State what it was. What did he say to you and what did you say to him?

Objected to by defendants as incompetent, irrelevant, and immaterial and hearsay. Overruled, and exception saved by defendants.

A. Mr. Buchan said that John was very firm in this matter, and that he ought to do something; that he was liable to be arrested at any time, and that he was doing it for his own good, and that he didn't get anything for this work; that he wanted to get him out of trouble, and he wanted me to go and talk with him and tell him just how it was and get him to make a statement different from what he had made; that the deputy sheriff was there, and he didn't know, if John didn't do something, what might turn up. That was about the words.
Q. What did you say in reply to that?

Objected to by defendants as incompetent, irrelevant, and immaterial and hearsay. Overruled, and exception saved by defendants.

A. He said that he wanted to get John out of trouble. He
433 was doing it for his own good, and if he didn't make a different statement from what he had made he would put himself into trouble.

Redirect examination:

Q. When John left your house and rode away with your horse what did he go for?

Objected to as incompetent, irrelevant, and immaterial.

A. He went down to work.

Q. Can you remember the place he started for—the name of the place he started for?

A. Right now I can't. It is away below Orrick. They were building a bridge across the Missouri river. I don't know the name of it now.

Q. Was it Poachport?

A. Yes, sir; that was the name.

Defendants move to strike out what the witness said in regard to the purpose for which John H. Brown was going away. He states that all he knows about it is what he said. Motion granted.

Mr. BARKER: I desire to submit a motion to strike out all the witness' testimony in regard to all these conversations with Buchan and Brown. Motion overruled, and exception saved for each of the defendants.

Be it further remembered that thereupon the plaintiff, to further sustain the issues upon her part, next introduced and read by consent a copy of the testimony given at a former trial of these cases by Levi Baldwin as a witness, who, being duly sworn, testified at such former trial, among other things, as follows:

Direct examination:

Q. What relation are you to Mrs. Hillmon?

A. Second cousin.

Q. When did you last see John W. Hillmon alive?

434 A. In the spring of 1879.

Q. Where?

A. At Lawrence, Kansas.

Q. When and where did you next see him, and what condition was he in at that time?

A. I next saw him at Medicine Lodge.

Q. Well, go on.

A. Buried; he was in the cemetery.

Q. How came you to go to Medicine Lodge?

A. I went at the request of Mrs. Hillmon.

Q. For what purpose?

A. To ascertain about the condition and state of affairs and fetch his body to Lawrence.

Q. What did you do after you arrived at Medicine Lodge?

Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved.

A. I consulted the people and physicians in regard to taking the remains home.

Defendants move to strike out the answer of the witness, for the reason that the same is incompetent, irrelevant, and immaterial. Overruled, and exception saved.

Q. Go on and state what further you did.

Objected to as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. They thought it was not best at that time. I made preparations for fixing the grave.

Defendants move to strike out that portion of the answer, "They thought it was not best at that time," as not being responsive
435 to the question and as being incompetent and immaterial testimony. Overruled, and exception saved by defendants.

Be it further remembered that thereupon the plaintiff, to sustain the issues in her behalf, produced as a witness JOHN ELDRIDGE, who being duly sworn, testified in part as follows:

Direct examination—questions by Mr. HUTCHINGS:

Q. Where do you live?
A. Lawrence, Kansas.
Q. How long have you lived in the city of Lawrence?
A. About 15 years.
Q. What is your occupation?
A. I am in the livery business.
Q. How long have you been in the livery business?
A. Ten or eleven years.
Q. Were you acquainted with John W. Hillmon in his lifetime?
A. Yes, sir.
Q. When did you first become acquainted with him?
A. Well, I was acquainted with him before I went into the livery business—about a year or such a matter.
Q. During the time of your acquaintance with him, what business was Hillmon engaged in?
A. The first time I knew him he was herding cattle.
Q. What business was he subsequently engaged in?
A. Well, I only know of his buying hogs.
Q. Where did he have his headquarters?
A. Well, he was buying hogs at my place.
Q. When was that?
A. I have forgotten; it was just shortly after his marriage.
436 Q. What time of the year?
A. I think it was along in October.
Q. At about the time he was buying hogs at your stable at your place, you may state if you knew of his having any money.
A. I know of his having money just before he commenced buying hogs.
Q. State what you saw with regard to the money he had.

Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. I could not say how much. He had it in three or four packages, wrapped up in a newspaper; I could not say how much there was.

Q. Did you notice the denomination of the bills?

Same objection. Overruled, and exception saved by defendants.

A. I saw tens and I saw one or two fifties.

Q. How large a package was it that he had?

Same objection. Overruled, and exception saved by defendants.

A. Well, I could not say as I remember right. I think there was three packages, and out of one of the packages he took a ten-dollar bill and he gave it to me—he owed me eight dollars for livery hire—and I gave him his change back.

Q. State how thick the packages were.

Same objection. Overruled, and exception saved by defendants.

A. Well, I could not tell. I remember there were three packages; they were probably—I should think they were an inch thick, I should judge.

Q. Each one of them that thickness, you should judge?

Same objection. Overruled, and exception saved by defendants.

A. Yes, sir.

Be it further remembered that thereupon the plaintiff, to
437 further sustain the issues upon her part, testified in her own behalf, among other things, being first duly sworn, as follows—it being shown that A. L. Selig was the agent of the Connecticut Mutual Life Ins. Co. to whom the policy sued on was sent for delivery:

Q. Are you acquainted with Mr. A. L. Selig, who resides in Lawrence?

A. Yes, sir.

Q. Did you go to Mr. Selig's office to see him at any time after your husband, John W. Hillmon, left the last time and before his death?

A. Yes, sir.

Q. How did you come to go to Mr. Selig's office?

A. He sent me a note to call at his office.

Q. About what time was that?

A. It was some time in March; from the 10th to along about the 15th of March.

Q. What time of the day did you go to his office?

A. I think it was in the afternoon.

Q. Did you have any conversation with him there at that time?

A. Yes, sir.

Q. In relation to what matter?

A. To a policy.

Q. In relation to one of the policies in this suit?

A. Yes, sir.
Q. Where was that policy?
A. He had it.
Q. In whose hands?
A. Mr. Selig.
Q. Now, then, what was said between you and Mr. Selig in relation to the policy?

438 Objected to on the ground that it is incompetent, irrelevant, and immaterial. Objection overruled, and exception saved by defendants.

A. I think it was the Connecticut Mutual.
Q. Was the policy in the hands of Mr. Selig at that time?
A. Yes, sir.
Q. From whom did you receive that policy?
A. Mr. Selig.
Q. At what time?
A. Yes, sir.

Defendants object to the last two questions as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

Q. What was said between you and Mr. Selig in relation to the policy at the time you obtained it?

Objected to by defendants on the ground that it calls for a conversation between them and because it is incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

Defendants also save special exception in behalf of the companies for which there is no claim that he was the agent, and on behalf of all the companies.

A. I went to his office and he told me that the policy had come, and he offered it to me. I told him, No; that my husband had written me ——
Q. Have you got that letter?
A. I think so.
Q. Go on and state what you told him.

Objected to on the same grounds as contained in objection last above. Objection overruled, and exception saved by defendants.

A. I told him my husband said I could call and get the money and not take the policies; that he would be home in a short time and he could not carry those policies, and Mr. Selig said that I had better take the policies, because if any accident should happen — him out in that wild country that I would have that much more
439 money, and if I should cancel it it would be only a small amount at the present time and it might be of great use by and by.
Q. What did you reply?

Objected to on the same grounds as contained in the objection last above. Objection overruled, and exception saved by the defendants.

A. I told him I would prefer the money, and he said no; I had better take his advice and keep the policy.

Q. What did he say about the premiums having been paid?

Same objection. Overruled, and exception saved by defendants.

A. He said it was all paid for.

Q. When you asked him to return the premium did he refuse to do so?

Objected to as incompetent, irrelevant, and immaterial and hearsay. Overruled, and exception saved by defendants.

A. Yes, sir. He insisted that I should take the policy.

Q. What did he say?

Objected to as incompetent and hearsay. Objection overruled, and exception saved by defendants.

A. He refused to give me the money and told me to take the policy.

Q. What did you do?

A. I took the policy.

Be it further remembered that, evidence touching the size of the foot of John W. Hillmon & also of the corpse having been introduced, thereupon the plaintiff, to further sustain the issues on her part, produced as a witness HENRY S. CLARK, who, being first duly sworn, testified in part as follows:

Q. Do you remember the time when the body of a person
440 alleged to have been John W. Hillmon was brought back from Medicine Lodge to Lawrence?

A. Yes, sir; I recollect it.

Q. Do you remember—did you see the dead body?

A. Yes, sir.

Q. Did you try on the boot that he wore—that was brought back?

A. I tried on a rubber boot that was in a trunk that was said to be his effects.

Q. How did that boot fit your foot?

Objected to as incompetent, irrelevant, and immaterial by defendants. Overruled, and exception saved by defendants.

A. That boot was too long for my foot.

Q. How much?

Same objection. Overruled, and exception saved by defendants.

A. I should think a size and a half; possibly two sizes.

Q. What size boot or shoe do you wear?

Objected to by defendants as incompetent, irrelevant, and immaterial. Objection overruled, and exception saved by defendants.

A. I wear a number 7.

Q. Mr. Clark, at that inquest you were sheriff then, you said?

A. Yes, sir.

Q. Did you serve any subpœna upon Mrs. Hillmon to produce any pictures upon that inquest?

Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. Yes, sir.

Q. Did you receive any pictures from Mrs. Hillmon, or were there any delivered there at that inquest?

Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. Yes, sir.

Q. Did you see among those pictures obtained from Mrs. Hillmon a tintype of John H. Brown and Mr. Hillmon together, standing?

441 Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. I did.

Q. When did you last see that picture?

Objected to by defendants as incompetent, irrelevant, and immaterial. Overruled, and exception saved by defendants.

A. The last I saw of that I handed it to the county attorney, Mr. Green.

Q. Mr. Green here, counsel for the defendants?

A. Yes, sir.

Q. Where was that?

Objected to by defendants as incompetent, irrelevant, and immaterial. —, by defendants.

A. It was in the court-room where the inquest was being carried on.

Be it further remembered that, plaintiff having rested her case, thereupon the defendants, to support the issues in their behalf, introduced evidence tending to show that the body found by the campfire on Crooked creek on the evening of March 18th, 1879, was not the body of John W. Hillmon; also evidence tending to impeach the credibility of John H. Brown; also evidence tending to identify the body found in the camp on Crooked creek as being that of one Frederick Adolph Walters. Defendants also introduced testimony touching the pecuniary standing and ability of John W. Hillmon at the date of the procuring the insurance upon his life. Defendants also introduced in evidence the several releases signed by plaintiff and pleaded by defendants; also evidence tending to show when, where, and under what circumstances plaintiff signed the same.

Be it further remembered that A. L. Selig, being called as
442 a witness by the defendants, testified, among other things, that he was present in Dr. Stuart's office when John W. Hillmon was measured by Dr. Stuart, as testified to by the latter; that Hillmon stood up by the door casing, something was placed over his head,

and measurement taken either with a rule or tape-line; that the witness Selig did not hold the rule or tape-line, but saw Dr. Stewart make the measurement; that he looked at the measure, but could not tell what the height of Hillmon was without being told by the person making the measurement; that the knowledge that he had as to the height of Hillmon was derived from what Dr. Stuart stated at the time of the measurement.

Thereupon plaintiff moves to strike out the witness' statement that Hillmon was five feet nine inches high as not being within his own knowledge. Motion sustained, and duly excepted to by defendants.

And, being further interrogated, testified as follows:

Q. They proved by you the other day that you were an insurance agent. I will ask you if it is the practice or the custom of insurance men for people to solicit insurance, or is it the other way? Do companies or their agents usually solicit parties to become insured?

A. We generally—our work consists in soliciting the insurance.

Q. State whether or not it is a usual thing for a man to go into the office and apply for insurance without being solicited by any one.

—. No, sir; it is rather unusual.

Q. You may state whether or not twenty-five thousand dollars is a usual or unusual amount of insurance for one person to have, taking into consideration your experience as an agent.

Objected to as irrelevant and immaterial. Sustained, and exception saved.

Q. How long have you been engaged in the life-insurance business?

443 A. Fifteen years.

—. State whether or not you have the means of knowing to a considerable extent the amount of insurance usually carried by people.

A. Approximately only.

Q. Has that knowledge been derived from the business you have carried on?

A. Yes, sir.

Q. State whether or not you have taken considerable, many applications during that fifteen years.

A. Yes, sir.

Q. State whether or not it has been largely from the vicinity of Lawrence and in that vicinity.

A. Yes, sir.

Q. And been confined entirely to the State of Kansas?

A. Yes, sir.

Q. Now you may state if you ever knew of a party worth three to four thousand dollars carrying twenty-five thousand dollars life insurance.

Objected to as immaterial and irrelevant. Sustained, and exception saved.

Q. You may state whether or not twenty-five thousand dollars

would be an ordinary or an exceedingly large amount of insurance for a person in those circumstances to carry, so far as your experience is concerned.

Objected to as immaterial and irrelevant. Sustained, and exception saved.

Be it further remembered that there was evidence tending to show that when the policies were issued the companies knew the amount of insurance applied for by Hillmon.

444 Be it further remembered that the defendants next offered the testimony of Mrs. G. A. Nichols, taken at Leavenworth, Kansas, in 1885, upon a former trial *for* the cause and by consent read as her deposition in this trial. Contained in said deposition was the question, "Do you know anything in regard to the scar on his hand?" "Well, I didn't see the scar that I remember of, but I heard him and my husband talking about it while I was getting supper in the evening, but I didn't notice it."

Thereupon plaintiff moves to strike out the answer of the witness as incompetent, irrelevant, and hearsay. Motion sustained; to which ruling the defendants duly excepted.

Be it further remembered that in the same deposition the following question was put to the witness, it appearing that she was a sister of John W. Hillmon and had testified that John W. Hillmon had lost a front tooth:

Q. "Now, in regard to the other members of the family—how about their teeth?"

Which question was objected to as being incompetent and irrelevant. Objection sustained, and the defendants at the time duly excepted.

Also the question, "Have you bad teeth?"

Objected to as incompetent and irrelevant. Question sustained, and the defendants duly excepted.

Also the question, "Did you and your brother, John W. Hillmon, have any conversation concerning teeth at that time?"

Objected to by plaintiff as being incompetent, immaterial, and irrelevant. Said objection was by the court sustained; to which ruling the defendants duly excepted.

445 Be it further remembered that the defendants next produced as a witness W. J. Buchan, who testified in part as follows:

That he was a lawyer; was acquainted with John H. Brown, his father and brothers; that in the latter part of March or first of April, 1879, John H. Brown's father told him that John was in trouble at Lawrence; he wanted him to look after him; that witness further testified that he had two interviews with John H. Brown—the first being in the latter part of April, 1879, or possibly the first of May, this interview being at Lexington; that at that interview John H. Brown detailed to him what he claimed were the facts in regard to his and Hillmon's trip through Southern Kansas,

the same being substantially what was afterwards put in writing; that he saw John H. Brown again a month or more afterwards—possibly in June or July—at Parkville, Missouri; that the witness went down to see Brown, in pursuance of a conversation had with one of the attorneys for the defendants, for the purpose of ascertaining what Brown's intentions were; that he again saw Brown about the 4th of September, 1879, in the neighborhood of Parkville, Missouri; that it was at this interview that the written affidavit, signed by John H. Brown, dated 4th of September, 1879, was made out and signed by Brown.

Witness testified further to conversations had at these several interviews with John H. Brown and to the circumstances leading to the execution of the written affidavit of September 4th, his testimony tending to show that Brown made the statements concerning the transactions set forth in the written affidavit voluntarily, and for the purpose of escaping trouble on his part, and to prevent being prosecuted at the instance of the insurance companies.

Witness testified further that he subsequently met Mrs. Hillmon at Leavenworth, Kansas; that the following questions and
446 answers are part of his testimony:

Q. State what took place between you and her in reference to the signing of these releases.

A. I had but very little talk with Mrs. Hillmon up to that time about it. We went to the Planters' House and got a room there, but I can't recollect the talk. She was willing to do what she was doing; was willing to sign these papers. She and John did most of the talking.

Q. State whether you urged her to sign the releases or not.

A. No, sir. She came there for the purpose of signing these releases. Her mind was fully made up to sign them.

On motion of plaintiff the court struck out all of this answer except the words "no, sir;" to which the defendants duly excepted.

Q. I will ask you if you stated to her that she could never recover in the cases, and that this would always be a cloud upon her character and reputation.

A. No, sir. There was no such talk as that at all.

Q. What did you say, if anything, about your having taken away her main witness?

A. I never said anything about it. There was no conversation of that kind at all. There was no conversation between her and myself or Brown and myself as to the policy of this or as to the reason for it. She came there to sign those papers, she said, whatever papers were wanted to get these policies, and she wanted John—rather insisted on John's going with her down to Wheat's office to get those policies; but John didn't seem to want to do it, and she and I went. There was no argument nor no talk as to why she should sign those papers.

Q. Look at these releases—they are marked—and state where they were signed.

447 A. They were signed at Leavenworth.
Q. By Mrs. Hillmon?
A. Yes, sir.

On cross-examination witness testified that on one of the occasions when he went to Missouri to try and see John H. Brown Samuel Walker was along; that Walker wished to see Brown, and witness, at the request of Brown's father, went along as a sort of guarantee that Walker would not arrest Brown nor make any attempt to do so; and thereupon, in further cross-examination, the following question was asked the witness:

"You could not prevent Walker arresting him if he wanted to?
"A. I don't know."

Defendants objected to this question and answer; which objection was overruled, and defendants excepted.

Be it further remembered that, further to sustain the issues upon their part, the defendants next produced as a witness Dr. V. G. MILLER, who, being first duly sworn, testified, among other things, as follows:

Q. You may state, Doctor, if you know the height of John W. Hillmon.
A. I do now. I did not then.
Q. How did you arrive at it?
A. John W. Hillmon came to my office and said he had made a mistake——
Q. How did you arrive at that height?
A. I had a measure on the door or window.
Q. Did you measure him?
A. Yes, sir. He made the statement, and I made a note of it.
Q. Who was present there at that time?
A. I don't know whether there was any one or not; I don't recollect.
448 Q. Mr. Hillmon was there, wasn't he?
A. Yes, sir.
Q. State whether or not you made it in the presence of Hillmon.
A. Yes, sir; I did.
Q. Have you your book?
A. I have the book here in which I made the memorandum.
Q. Under what circumstances did you make that memorandum there?
A. He came to my office and said he had made a mistake as to his height——

Mr. RIGGS: We object to that statement and move to strike it out. Sustained, and exception saved by the defendants.

WITNESS: I had a grade of feet and inches on the window or door and I had him stand up there, and I don't know whether I had a pencil or some substance or a book, something of that kind, in my hand, and I ran it over his head, and then I took it direct from the measurement.

Q. What did he measure at that time?
A. Five feet and nine inches.
Q. Look at the date commencing "Lawrence, Kansas," on page 328 of that book now shown you, and state whose handwriting that is in.
A. That is my handwriting.
Q. When did you make that?
A. I made it as dated here, December 17th, 1878.
Q. When, in reference to the time of measuring John W. Hillmon?
A. This was the time that I measured him, and it was made in his presence and read to him.
Q. Now, you may state what that is.

Objected to as incompetent. Sustained, and exception saved by defendants.

449 Q. Look at the book now shown you, marked Exhibit No. 23, at page 328 thereof, and state if at the time you measured John W. Hillmon you made an entry thereof, in that book and upon that page, of the fact.

Question withdrawn and witness asked: State if at the time you made that measurement you made a written memorandum of it. And, if so, what is that statement?
A. I may state that Hillmon called upon me and said that *he* had been a mistake made, and I have just made an effort, and I took his measurement, and I made an entry of the same, and I made it in this book and made it at this time.
By COURT: On what page?
A. On page 328.

WITNESS: I made it in the presence of John W. Hillmon.

Q. Did you make a memorandum of his height?
A. Yes, sir.
—. Did you read that memorandum to John W. Hillmon?
A. Yes, sir; I did.
Q. Did he make any objections?
A. None at all.
Q. At whose request was this memorandum made?

Objected to as calling for incompetent evidence, and because it is of and concerning matters of which oral evidence has been given, of a conversation that occurred and of a statement made in writing. Sustained, and exception saved by defendants.

Mr. BARKER: We will now offer that portion of page 328 in evidence of Exhibit 23 as commencing with the word "Lawrence" and ends with the word "Miller."

Objected to as incompetent and hearsay, and because they have already given oral evidence of its contents. Sustained, and
450 exception taken by defendants.

Copy of Entry Made by Dr. Miller in His Day Book.

LAWRENCE, KANSAS, *December* 17, 1878.

John W. Hillmon called upon me and reported a slight mistake in his height. He, Hillmon, is five feet nine inches in place of five feet eleven inches, as stated in his policy for life insurance in the New York Mutual.

(Signed) V. G. MILLER.

Q. At the time you measured John W. Hillmon there in your office did he remove his boots?
A. No, sir.

Be it further remembered that thereupon, to further sustain the issues on their part, the defendants produced E. B. GOOD, who, being first duly sworn and examined, testified in part as follows:

Q. State your name and where you reside.
A. E. B. Good; Lawrence, Kansas.
Q. How long have you resided in Lawrence?
A. About 22 years.
Q. In what business are you engaged now?
A. Grocery.
Q. State if you remember the fact of a dead body being brought to Lawrence about the 1st of April, 1879, which was at the undertaking establishment of Bailey & Smith, and on which an inquest was held.
A. Yes, sir.
Q. Do you remember of visiting Bailey & Smith's place as a juryman?
A. Yes, sir.

Q. You may state what her conduct was on that occasion,
451 whether it was serious or—just state the facts in reference to that matter.

Objected to as incompetent and immaterial. Objection sustained, and the defendants then and there duly excepted thereto.

Q. I don't ask what she said. I will ask you in regard to her manner of talking with the attorneys and the examining parties in regard to that.

Objected to as incompetent and immaterial. Objection sustained; to which ruling the defendants then and there duly excepted.

Q. State on that occasion what exhibitions of grief, if any, she made.

Objected to as incompetent and immaterial. Objection sustained; to which ruling the defendants then and there duly excepted.

Be it further remembered that thereupon, to sustain the issues in their behalf, the defendants introduced Dr. J. H. STEWART, who, being duly sworn, testified in part as follows:

Q. You may state, if you know, the height of John W. Hillmon.
A. Yes, sir.
Q. State how you came to know that height?
A. By measurement.
Q. How did you measure him there?
A. I measured him by a scale I had on the door in the office.
Q. How did you come to measure him?

Objected to by plaintiff as immaterial and incompetent. Objection sustained, and defendants duly excepted.

Be it further remembered that thereupon, to further sustain the issues upon their part, the defendants next produced as a witness C. R. WALTERS, who, being first duly sworn, testified, among
452 other things, as follows:

That he resided at Rich Hill, Missouri; was a brother of Frederick Adolph Walters; that his father's family resided for many years at Fort Madison, Iowa; that he last saw his brother Frederick Adolph at Holden, Missouri. He thinks it was in the year 1878. Witness testified that he corresponded frequently with his brother, and that since 1879 he had received no letters from his brother. Witness further testified that he had seen the photographs of the body at St. Louis, they having been sent to him by his father.

Witness further testified that his relations with his brother were of the friendliest character, and that the same was true of the relations between his brother and the remainder of his family.

Further testified that since receiving these pictures at St. Louis, which, as he remembers, was in 1879, he has regarded his brother Adolph as dead.

Thereupon this further question was put to the witness:

"Now you may state, if you know, how the other members of the family—your father, mother, and sisters—have regarded your brother Frederick Adolph; whether they have regarded him as being dead since they received those photographs."

Objected to as incompetent, irrelevant, and hearsay. Objection sustained, and the defendants then and there duly excepted.

Witness gave further testimony describing the size, build, appearance, and characteristics of his brother Frederick Adolph.

Witness further testified that he had received a letter from his brother Frederick Adolph written from Wichita, Kansas; that it was the last letter that he had ever received from him; that he had made diligent search for the letter and was unable to find it, and was satisfied that the letter was lost; that he remembered the
453 contents of the letter in question.

Thereupon defendants' counsel offered to prove by the witness the contents of the said letter; to which plaintiff objected as being incompetent, irrelevant, and hearsay. Objection sustained; to which the defendants duly excepted.

On further examination this question was asked the witness:

"Is it not a fact, Mr. Walters, that in 1880 you had no knowledge that your brother had been west of this city (Topeka); that in 1880 you stated in your letter—in one of your letters—that you understood that he died near the city of Topeka?"

Objected to as incompetent, irrelevant, and immaterial. Objection overruled; to which the defendants duly excepted.

A. Well, in 1880 I didn't know the location of Topeka. I didn't know whether Topeka was 400 miles from Kansas City or 40 miles.

Q. The question I am asking now is if it was not your understanding in 1880 that the last you had heard of your brother was from the vicinity of Topeka. Didn't you so understand?

Objected to by defendants. Objection overruled; to which ruling the defendants duly excepted.

A. I don't remember what I understood at that time.

And, being further interrogated, testified as follows:

Q. I wish you would refer to this letter that I showed you here in your handwriting and refresh your recollection.

A. Well, I don't remember. I could not say that he had or had not.

Q. At the time you wrote this letter it was your belief and impression that he had a few fillings in his teeth?

A. I don't know.

Q. You wrote that letter?

454 A. Yes; but I don't think there is anything definite in that letter one way or another. I had no knowledge of his having any filling done or of his not having any. I was merely saying that as my explanation of your previous question.

Witness is handed the letter referred to and asked:

Is that your signature to that letter?

A. Yes, sir; I think it is.

Q. I wish to ask the question. You may state if, in the letter shown you, dated May 22nd, 1880, you did not say——

Objected to by defendants as incompetent, irrelevant, and immaterial, the letter being the best evidence. Objection overruled, and exception saved by defendants.

Q. In that paragraph did you not say: "As regards your other questions, will say my brother, I think, had some dentistry performed on his teeth—a few fillings, perhaps. He also had a high instep and corns on his feet, though I cannot give a more positive description than the one already sent you, aside from this, as my brother and I were only a few times together in the past ten years."

Q. The question is, Did you write or say that in this letter?

Objected to by defendants as incompetent and immaterial. The letter is the best evidence. Objection overruled and exception saved by defendants.

A. I presume I did, if you read it correctly.

Q. Did you not also say in that letter: "He visited me for a week or so, then went to Paola, Kansas, where he remained for a short time; after that he went to Topeka, and in the spring of 1879, towards Lawrence. I received but few letters from him, as he never wrote often"?

455 Objected to by defendants as incompetent and immaterial evidence. The letter is the best evidence. Objection overruled and exception taken by defendants.

A. Yes, sir.

Also as follows:

Q. I will ask you to state—look at this portion of the letter to which your attention has been called by the counsel for plaintiff, commencing there——

Question about to be asked by plaintiff is objected to as incompetent, irrelevant, and immaterial. Sustained, and exception saved by defendants.

Mr. BARKER: Then I desire to offer the portion of this letter, it being the same letter to which your attention has been called by the counsel for plaintiff, and in reference to which you were asked questions, commencing with the words "You could gain nothing" and ending with the words "over the sad affair," on page two of the letter; and in the same connection will offer in evidence—I will ask the witness if at the same time he did not write the following words, commencing with the words "my mother" and ending with the words "deranged over the sad affair."

Objected to by plaintiff as hearsay, irrelevant, and incompetent. Objection sustained and exception saved by defendants.

(Here follows the portion of the letter offered in evidence:)

"You would gain nothing yourself by going to Iowa, as I can and will give you all information in our possession regarding this affair; besides, your going there would be distasteful to my folks, as they are deeply mourning the dead man at Lawrence as their relative, particularly my mother, who is now almost deranged over the sad affair."

Mr. BARKER: I desire to offer in evidence the portion in-
456 cluded in the two brackets there.

Objected to by plaintiff as incompetent, irrelevant, and hearsay. Sustained, and exception saved by defendants.

Here follows the portion of the letter offered in evidence, as follows:

"If there is any doubt of the dead man being my brother, of course the sooner I know it the better; also for all concerned. I have no sympathy for the insurance companies you mention whatever, for they have no interest—at least, but their own—and, of course, no

thought of justice in the matter if they really believe the man in question to have been murdered as supposed."

Witness is shown picture of the cadaver and asked: From the time you first saw those pictures in St. Louis, or those similar to that, up to the present time, have you ever entertained any doubt about their being the picture of your dead brother?

A. I never had any doubt.

Q. Have you any doubt now?

A. No, sir.

Be it further remembered that the defendants, to further maintain the issues in their behalf, introduced as a witness Mrs. ELIZABETH RIEFFENACH, who, being duly sworn, testified in part as follows:

Witness testified that she was a sister of Frederick Adolph Walters, living at Fort Madison, Iowa.

The following questions, among others, *was* put to said witness:

Q. Now you may state if you know how the other members of the family—your father, mother, and sisters—have regarded your brother Frederick Adolph—whether they have regarded him as living or dead—since they have received those pictures.

457 Objected to as incompetent, irrelevant, and hearsay. Objection sustained; to which the defendants duly excepted.

Q. You may state how your father regarded this matter after he received this picture—whether he regarded him as dead or living.

Same objection as before. Objection sustained; to which the defendants duly excepted.

Witness further testified that she had received a letter written from Wichita, Kansas, about the 4th or 5th day of March, 1879, by her brother Frederick Adolph; that the letter was dated at Wichita, and was in the handwriting of her brother. She had searched for the letter but could not find the same, it being lost; that she remembered and could state the contents of the letter.

Thereupon defendants' counsel asked the question:

Q. State the contents of that letter.

To which plaintiffs objected on the ground that the same is incompetent, irrelevant, and hearsay. The objection was sustained, and the defendants duly excepted.

The following is the letter as stated by witness:

WICHITA, KANSAS,
March 4th or 5th or 3rd or 4th—I don't know—1879.

DEAR SISTER AND ALL: I now in my usual style drop you a few lines to let you know that I expect to leave Wichita on or about March the 5th, with a certain Mr. Hillmon, a sheep-trader, for Colorado or parts unknown to me. I expect to see the country now. News are of no interest to you, as you are not acquainted here. I will close with compliments to all inquiring friends. Love to all.

I am truly your brother,

FRED. ADOLPH WALTERS.

458 Be it further remembered that defendants introduced as a witness Alvina D. Kasten, who testified that she was twenty-one years of age and resided in Fort Madison, Iowa; was well acquainted with Frederick Adolph Walters; that she was engaged to be married to him; that she last saw him on the 24th of March, 1878, at Fort Madison; he left there at that time and has not returned; that she corresponded regularly with him; received a letter about every two weeks until the 3rd day of March, 1879, which was the last time she received a letter from him; that this letter was dated at Wichita, Kansas, March 1st, 1879, and was addressed to witness at Fort Madison, Iowa, and the envelope was postmarked "Wichita, Kansas, March 2nd, 1879;" that she had never heard from or seen Frederick Adolph since that time.

Thereupon defendants introduced in evidence the envelope containing said letter, with the postmark thereon, "Wichita, Mar. 2nd;" addressed, "Miss Alvina Kasten, Fort Madison, Iowa, Lee county."

Thereupon defendants offered to read in evidence the said letter written by Frederick Walters to Miss Kasten. Plaintiff objected to the reading of the same; which objection the court sustained, and the defendants at the time duly excepted.

The letter so offered to be read in evidence and ruled out by the court is as follows:

WICHITA, *Mar.* 1*st*, 1879.

DEAREST ALVINA: Your kind and ever-welcome letter was received yesterday afternoon, about an hour before I left Emporia. I will stay here until the fore part of next week, and then will leave here to see a part of the country that I never expected to see when I left home, as I am going with a man by the name of Hill-
459 & 460 mon, who intends to start a sheep ranch, and as he promised me more wages than I could make at anything else I concluded to take it, for awhile at least, until I strike something better. There is so many folks in this country that have got the Leadville fever, and if I could not of got the situation that I have now I would have went there myself; but as it is at present I get to see the best portion of Kansas, Indian Territory, Colorado, and Mexico. The route that we intend to take would cost a man to travel from $150 to $200, but it will not cost me a cent; besides, I get good wages. I will drop you a letter occasionally until I get settled down; then I want you to answer it (you bet, honey)—don't it? So you can see that I will not get home for a few months yet, but cannot tell how soon I will get back. I am about as anxious to see you as you are to see me, but I do not want to get back there without a cent of money, for that is what I left for (you know).

When I get back you will get to see me in about the way we parted (you bet). If any one asks you what I am doing, tell them that you were not informed, for it is none of their business, and, another thing, don't ask me to write long letters, for I would without being told if I could find the words when I write, as I am generally busy when I receive a letter from my (old woman) sweet little girl.

But you know that without being told, so I will not waste any more paper on that subject (at present). I will have to come to a close before long or I will have to do as that other fellow—write two sheets and swindle the p'master out of three cents, and you know I don't like to do that (pet). Please give compliments to enquiring friends and all the love that you can embrace for yourself and nobody else. I will close for this time, love, to let you hear from me soon again.

Yours as ever, F. A. WALTER.

461 Be it further remembered that the defendants called as witnesses Col. Bradley, Judges Horton, Valentine, Johnston, and Humphrey, and, having shown that said witnesses were acquainted with W. J. Buchan, the defendants asked each of the said parties the question:

"State the reputation for professional integrity and standing of said W. J. Buchan."

Which question was objected to by plaintiff as incompetent and irrelevant. Objection sustained; to which the defendants duly excepted.

And thereupon the said defendants and each of them prayed that this their bill of exceptions in their behalf might be allowed, which is accordingly done, and upon their motion is signed and ordered to be made a part of the record in this case this 28th day of June, 1888.

O. P. SHIRAS, *Judge.*

Endorsed: Nos. 3147, 3148, 3149. Bill of exceptions. Filed June 28, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

462 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 4th day of June, A. D. 1888, proceedings were had and appear of record in words and figures following, to wit:

SALLIE E. HILLMON
vs.
THE NEW YORK LIFE INSURANCE COMPANY. } 3148.

SALLIE E. HILLMON
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 3149.

SALLIE E. HILLMON
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } 3147.

MONDAY, *Aug.* 6, 1888.

The above-named causes, heretofore consolidated for the purposes

of trial and tried *to* the court and jury as one cause, beginning Feb'y 29, 1888, now coming up for hearing upon the motion for new trial filed on behalf of the said defendants, and the plaintiff and the several defendants appearing by their respective counsel, the said motion for new trial was duly argued & submitted to the court, and, having been duly considered, the same is overruled; to which ruling the defendants and each of them duly excepted; and thereupon it is ordered and adjudged that plaintiff have judgment against each defendant upon the verdict rendered against each defendant by the jury, the judgment to be entered against each defendant for the amount of the verdict, with interest from the date of the ren-
463 dition of the verdict, each entry to show exceptions thereto by defendant therein; and thereupon, in pursuance to the previous order of court, the bill of exceptions tendered by and on behalf of the said defendants and each of them was submitted for examination & settlement, and the same, having been duly examined and corrected, was settled and allowed and ordered to be filed by the clerk as of the date of June 28th, 1888.

June 28, 1888.

O. P. SHIRAS, *Judge.*

463½ SALLIE E. HILLMON *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } 3149.

MONDAY, *Aug.* 6, 1888.

This day this cause coming up for hearing upon plaintiff's motion for judgment, and it appearing that on the 21st day of March, 1888, a verdict for plaintiff had been rendered in said cause awarding damages against the defendant in the sum of seven thousand five hundred and thirty dollars, and that by order of the court and the consent of the parties the hearing upon the motion for new trial filed by defendant had been fixed for June 28th, 1888, and that upon that day the parties had duly appeared before the court and presented said motion for new trial, and that said motion, after consideration, had been overruled and judgment ordered to be entered upon the verdict in favor of plaintiff—

It is therefore ordered and adjudged that the plaintiff herein, Sallie E. Hillmon, have & recover judgment against the defendant, The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, for the sum of seven thousand five hundred and thirty dollars ($7,530.00), with interest thereon from the 21st day of March, A. D. 1888, and for her costs in this behalf expended, taxed at —, and that she have execution therefor; to which rulings, orders, and judgment the defendant duly excepts.

464 In the Supreme Court of the United States.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Plaintiff in Error,
vs.
SALLIE E. HILLMON, Defendant in Error.

THE NEW YORK LIFE INSURANCE COMPANY, Plaintiff in Error,
vs.
SALLIE E. HILLMON, Defendant in Error.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Plaintiff in Error,
vs.
SALLIE E. HILLMON, Defendant in Error.

Consolidated Case.

Petition in Error.

The said plaintiffs in error, The Mutual Life Insurance Company of New York, The New York Life Insurance Company, and The Connecticut Mutual Life Insurance Company, complain that heretofore the said defendant in error, Sallie E. Hillmon, duly
465 commenced in the circuit court of the United States for the district of Kansas her separate suit against each of the plaintiffs upon the several insurance policies which they issued upon the life of John W. Hillmon; that thereafter, by the order of said court and against the objections of each of said plaintiffs in error, said separate actions were consolidated and were tried together, and for that reason said plaintiffs in error are joined in this petition in error.

The said plaintiffs in error further complain of the said defendant in error that the said defendant in error, at the June term of the circuit court of the United States for the district of Kansas, A. D. 1888, recovered a judgment against each of said plaintiffs in error by the consideration of said court in the consolidated action then pending in said court, wherein the said defendant in error was plaintiff and the said plaintiffs in error were defendants.

A copy of the record of the judgment and proceedings in each case, duly certified, is attached hereunto, marked "A," and made a part of this petition; and each of said plaintiffs in error aver that there is error in the said records and proceedings, in this, to wit:

1. That the said court erred in making its order consolidating said causes for trial over the objection of each of said plaintiffs in error.

2. That the said court erred in overruling the motion and application of each of said plaintiffs in error, filed in this cause, asking said court to vacate and set aside its said order consolidating said causes for trial.

3. That the said court erred, in the impanelling of the jury in said cause, in refusing to allow each of the plaintiffs in error three

466 peremptory challenges of jurors and in holding and limiting all the said plaintiffs in error to three peremptory challenges only, which was duly excepted to at the time by each of said plaintiffs in error.

4. That the said court erred in admitting the evidence of the witness, John Brown, produced on behalf of the defendant in error, to the following question:

What was the purpose of that trip?

5. That the said court erred in sustaining the objection of said defendant in error to the question asked of the said witness, John Brown, on his cross-examination, as follows:

On the 5th day of April, A. D. 1879, in the office of George J. Barker, in Lawrence, Kansas, were you not shown a postal card from Griffin, Texas, directed to Mr. Brocklesby, city marshal of Lawrence, inquiring if a man by the name of Hillmon lived in Lawrence, and stating in substance that he had a difficulty with a train of cattle; also stating that Hillmon formerly lived near Grasshopper; and if you were not asked if Hillmon was ever at Griffin, Texas, and if in reply thereto you did not state that Hillmon had been at Griffin, Texas, and that you was with him there.

6. That the said court erred in sustaining the objection of defendant in error to question # 1244, asked of said witness, John Brown, on his cross-examination, beginning as follows:

State if the following is the statement made and prepared on the 4th day of September, 1879, at your brother's residence, situated near Parkville, Missouri.

7. That the said court erred in sustaining the objection of defendant in error to the question asked of the said witness, John Brown, on his cross-examination, as follows:

467 Did you not sign this statement in the presence of and swear to it before Francis M. McDonald, at his office, in Parkville, Missouri, on the 4th day of September, 1879?

8. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

Did you or did you not sign this statement in the presence of and swear to it before Francis M. McDonald, at his office, in Parkville, Missouri, on the 4th day of September, 1879, or at any other time?

9. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

Did you sign this statement in the presence of Francis M. McDonald and W. J. Buchan, at the office of McDonald, at Parkville, Missouri, on the 4th day of September, 1879, or at any other time?

10. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

Did not this statement, the statement referred to in question No. 1244, have attached to it the following words at the time you tore it up and put it in the stove at Buchan's office: "Subscribed in my presence and sworn to before me this 4th day of September, A. D.

1879. My term expires on the 2nd day of April, 1883.—Francis M. McDonald, notary public."

11. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

468 Did not this statement that you tore up and put in the stove at Buchan's office, in the presence of Buchan and Mrs. Hillmon, have attached to it the words quoted in question No. 1253?

12. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

Did this statement that you tore up and put in the stove at Buchan's office, in the presence of Mrs. Hillmon, have the impression of a seal of any kind on it?

13. That the court erred in sustaining the objection of defendant in error to the question asked of said witness, John Brown, on his cross-examination, as follows:

Does question No. 1244 of this deposition contain a correct statement of the contents of the paper or statement written by Buchan in your brother's house at Parkville, Missouri, on or about the 4th day of September, 1879, which was present on the same day in the office of Francis M. McDonald, in Parkville, Platte county, Missouri, at the same time you and J. W. Buchan were there, which paper or statement you afterwards tore up and threw into the stove, in the office of said Buchan, in the city of Wyandotte, Kansas? If not, state wherein the statement contained in said question differs from the statement above referred to, which you tore up in Buchan's office. (Here the notary is requested to read to the witness the statement contained in the quoted part of the said question, which he here does.)

14. That the said court erred in admitting the evidence of the witness, Dr. Simmons, produced on behalf of the defendant in error, to the following question:

469 Picture marked "Exhibit C" shown witness and witness asked: Do you recognize that photograph as the picture of any party you have ever known?

15. That the said court erred in admitting the evidence of the witness, Dr. Simmons, produced on behalf of the defendant in error, to the following question:

Of whom is that a picture?

16. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Photograph marked "Exhibit H" is shown witness and witness asked: Is that photograph last shown you a picture of any one you have ever known?

17. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Of whom is that a picture?

18. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Are you able from an observation of the picture in your hands,

the front view of the dead man, to locate the point of injury to the nose which you were called upon to treat?

19. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Is there any mark on the nose of the picture referred to which indicates the place of that injury?

20. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

State whether the defect is located on the nose in the place
470 compared with the place where the injury on Hillmon's nose occurred.

21. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Pictures of the corpse shown witness and witness asked: What is your best judgment—what are these pictures of? Doctor, state to the jury what they are.

22. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

You stated that you might not say positively as to whether they were the pictures of any one that you ever knew. What is your best judgment in regard to the matter?

23. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

I do not ask you to say that; I ask what is your best judgment, what is your best opinion, in regard to the matter?

24. That the said court erred in admitting the evidence of the witness, Dr. Simmons, to the following question:

Why are you not able to say or to express an opinion as to whose pictures these photographs are?

25. That the said court erred in admitting the evidence of the witness, Reuben Brown, produced on behalf of the defendant in error, to the following question:

State what conversation you had with Mr. Buchan at that time at his office.

26. That the said court erred in admitting the evidence of the witness, Reuben Brown, to the following question:

What was said about any trouble that he was in, if anything?

27. That the said court erred in admitting the evidence of
471 the witness, Reuben Brown, to the following question:

State what it was. What did he say to you and what did you say to him?

28. That the said court erred in admitting the evidence of the witness, Reuben Brown, to the following question:

What did you say in reply to that?

29. That the said court erred in admitting the evidence of the witness, Reuben Brown, to the following question:

When John left your house and rode away with your horse what did he go for?

30. That the said court erred in overruling the motion of plaintiffs in error to strike out all the conversations between said witness, Reuben Brown, and one W. J. Buchan.

31. That the said court erred in admitting the evidence of the witness, Levi Baldwin, produced on behalf of the defendant in error, to the following question:

What did you do after you arrived at Medicine Lodge?

32. That the said court erred in overruling the motion of plaintiffs in error to strike out the answer of witness, Levi Baldwin, "I consulted the people and physicians in regard to taking the remains home."

33. That the said court erred in overruling the motion of plaintiffs in error to strike out that portion of the answer of the witness, Levi Baldwin, "They thought it was not best at that time."

34. That the said court erred in admitting the evidence of the witness, John Eldridge, produced on behalf of the defendant in error, to the following question:

State what you saw with regard to the money he had.

35. That the said court erred in admitting the evidence of
472 the witness, John Eldridge, to the following question:

Did you notice the denomination of the bills?

36. That the said court erred in admitting the evidence of the witness, John Eldridge, to the following question:

How large a package was it that he had?

37. That the said court erred in admitting the evidence of the witness, John Eldridge, to the following question:

State how thick the packages were.

38. That the said court erred in admitting the evidence of the witness, John Eldridge, to the following question:

Each of them that thickness, you should judge?

39. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, on her own behalf, to the following question:

Now, then, what was said between you and Mr. Selig in relation to the policy?

40. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following questions:

From whom did you receive that policy?

At that time?

41. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

What was said between you and Mr. Selig in relation to the policy at the time you obtained it?

42. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

473 Go on and state what you told him.

43. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

What did he reply?

44. That the said court erred in admitting the evidence of the

witness, Sallie E. Hillmon, defendant in error, to the following question:

What did he say about the premiums having been paid?

45. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

When you asked him to return the premium did he refuse to do so?

46. That the said court erred in admitting the evidence of the witness, Sallie E. Hillmon, defendant in error, to the following question:

What did he say?

47. That the said court erred in admitting the evidence of the witness, Henry S. Clark, produced on behalf of the defendant in error, to the following question:

How did that boot fit your foot?

48. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

How much?

49. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

What size boot or shoe do you wear?

50. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

Did you serve any subpœna upon Mrs. Hillmon to produce any pictures upon that inquest?

51. That the said court erred in admitting the evidence of
474 the witness, Henry S. Clark, to the following question:

Did you receive any pictures from Mrs. Hillmon, or were there any delivered there at that inquest?

52. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

Did you see among those pictures obtained from Mrs. Hillmon a tintype of John H. Brown and Mr. Hillmon together, standing?

53. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

When did you last see that picture?

54. That the said court erred in admitting the evidence of the witness, Henry S. Clark, to the following question:

Where was that?

55. That the said court erred in sustaining the motion of the defendant in error to strike out the statement of the witness, Mr. A. L. Selig, produced on behalf of the plaintiffs in error, that Hillmon was five feet nine inches high.

56. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, A. L. Selig, as follows:

You may state whether or not twenty-five thousand dollars is a usual or unusual amount of insurance for one person to have, taking into consideration your experience as an agent.

57. That the said court erred in sustaining the objection of the

defendant in error to the question asked of said witness, A. L. Selig, as follows:

Now, you may state if you ever knew of a party worth three to four thousand dollars carrying twenty-five thousand dollars life insurance.

475 58. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, A. L. Selig, as follows:

You may state whether or not twenty-five thousand dollars would be an ordinary or an exceedingly large amount of insurance for a person in those circumstances to carry, so far as your experience is concerned.

59. That the said court erred in sustaining the motion of the defendant in error to strike out the answer of the witness, Mrs. G. A. Nichols, produced on behalf of the plaintiffs in error, to the following question:

Q. "Do you know anything in regard to the scar on his hand?"

A. "Well, I didn't see the scar, that I remember of, but I heard him and my husband talking about it while I was getting supper, in the evening, but I didn't notice it."

60. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Mrs. G. A. Nichols, as follows:

Now, in regard to the other members of the family, how about their teeth?

61. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Mrs. G. A. Nichols, as follows:

Have you bad teeth?

62. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Mrs. G. A. Nichols, as follows:

Did you and your brother, John W. Hillmon, have any conversation concerning teeth at that time?

476 63. That the said court erred in sustaining the motion of the defendant in error to strike out the answer of the witness, W. J. Buchan, as follows:

"No, sir; she came there for the purpose of signing these releases; her mind was fully made up to sign them," with the exception of the words "No, sir."

64. That the court erred in admitting the evidence of the witness, W. J. Buchan, produced on behalf of the plaintiffs in error, to the following question, propounded by defendant in error on cross-examination:

You could not prevent Walker arresting him if he wanted to?

65. That the said court erred in sustaining the motion of the defendant in error to strike out the following answer of the witness, V. G. Miller, to the following question:

Q. Under what circumstances did you make that memorandum there?

A. He came to my office and said he had made a mistake as to his height.

66. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Dr. V. G. Miller, as follows:

Now, you may state what that is.

67. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Dr. V. G. Miller, as follows:

At whose request was this memorandum made?

68. That the said court erred in refusing to admit the testimony offered by the plaintiffs in error of that portion of page 328 in evidence of Exhibit 23 as commencing with the word "Lawrence"
477 and ends with the word "Miller."

69. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, E. B. Good, produced on behalf of the plaintiffs in error, as follows:

You may state what her conduct was on that occasion, whether it was serious or—just state the facts in reference to that matter.

70. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, E. B. Good, as follows:

I don't ask what she said. I will ask you in regard to her manner of talking with the attorneys and the examining parties in regard to that.

71. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, E. B. Good, as follows:

State on that occasion what exhibitions of grief, if any, she made.

72. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, Dr. J. H. Stewart, produced on behalf of the plaintiffs in error, as follows:

How did you come to measure him?

73. That the said court erred in sustaining the objection of the defendant in error to the question asked of said witness, C. R. Walters, produced on behalf of the plaintiffs in error, as follows:

Now, you may state if you know how the other members of the family—your father, mother, and sisters—have regarded your brother Frederick Adolph—whether they have regarded him as being dead since they received those photographs.

74. That the said court erred in that it refused to allow the
478 said witness, C. R. Walters, to state the contents of a letter received by him from his brother, Frederick Adolph Walters, written at Wichita, Kansas.

75. That the said court erred in admitting the evidence of the witness, C. R. Walters, to the following question:

Is it not a fact, Mr. Walters, that in 1880 you had no knowledge that your brother had been west of this city (Topeka); that in 1880 you stated in your letter—in one of your letters—that you understood that he died near the city of Topeka?

76. That the court erred in admitting the evidence of the witness, C. R. Walters, to the following question:

The question I am asking now is if it was not your understanding in 1880 that the last you had heard from your brother was from the vicinity of Topeka? Didn't you so understand?

77. That the said court erred in admitting the evidence of the witness, C. R. Walters, to the following question:

I wish to ask the question: You may state if in the letter shown you, dated May 22nd, 1880, you did not say——

78. That the said court erred in overruling the objection of the plaintiff in error to the following question asked the witness, C. R. Walters, and permitting the same to be answered:

In that paragraph did you not say: "As regards your other questions, will say my brother, I think, had some dentistry performed on his teeth—a few fillings, perhaps. He also had a high instep and corns on his feet, although I cannot give a more positive description than the one already sent you, aside from this, as my brother and I were only a few times together in the past ten years."

79. That the said court erred in overruling the objection
479 of the plaintiff in error to the following question asked the witness, C. R. Walters, and permitting same to be answered:

The question is, Did you write or say that in this letter?

80. That the said court erred in overruling the objection of the plaintiff in error to the following question asked the witness, C. R. Walters, and permitting same to be answered:

Did you not also say in that letter: "He visited me for a week or so, then went to Paola, Kansas, where he remained for a short time; after that he went to Topeka, and, in the spring of 1879, towards Lawrence. I received few letters from him, as he never wrote often"?

81. That the court erred in sustaining the objection of the defendant in error and in not permitting the plaintiffs in error to introduce that portion of said letter included in the question of the plaintiffs in error, as follows:

I will ask you to state—look at this portion of the letter to which your attention has been called by the counsel for plaintiff, commencing there——

Then I desire to offer the portion of this letter, it being the same letter to which your attention has been called by the counsel for plaintiff and in reference to which you were asked questions, commencing with the words "You could gain nothing" and ending with the words "over the sad affair," on page two of the letter; and in the same connection will offer in evidence—I will ask the witness if at the same time he did not write the following words, commencing with the words "my mother" and ending with the words "deranged over the sad affair."

(Here follows the portion of the letter offered in evidence.)

480 "You would gain nothing yourself by going to Iowa, as I can and will give you all the information in our possession regarding this affair; besides, your going there would be distasteful

to my folks, as they are deeply mourning the dead man at Lawrence as their relative—particularly my mother, who is now almost deranged over the sad affair."

82. That the said court erred in ruling out that portion of said letter as called for by plaintiffs in error, that portion of said letter being as follows:

"If there is any doubt of the dead man being my brother, of course the sooner I know it the better; also for all concerned. I have no sympathy for the insurance companies you mention whatever, for they have no interest—at least, but their own—and, of course, no thought of justice in the matter if they really believe the man in question to have been murdered as supposed."

83. That the said court erred in sustaining the objection of the defendant in error to question propounded by plaintiffs in error to witness, Elizabeth Rieffenach, as follows:

Now you may state if you know how the other members of the family—your father, mother, and sisters—have regarded your brother Frederick Adolph—whether they have regarded him as living or dead—since they have received those pictures.

84. That the said court erred in sustaining objection of defendant in error to the question asked of said witness, Elizabeth Rieffenach, by plaintiffs in error as follows:

You may state how your father regarded this matter after he received the picture—whether he regarded him as dead or living.

85. That the said court erred in refusing to allow the said witness, Elizabeth Rieffenach, to state the contents of the letter re-
481 ceived by her from her brother, Frederick Adolph Walters, which letter is dated March 4th or 5th or 3rd or 4th, 1879, and which is as follows:

"DEAR SISTER AND ALL: I now in my usual style drop you a few lines to let you know that I expect to leave Wichita on or about March the 5th with a certain Mr. Hillmon, a sheep-trader, for Colorado or parts unknown to me. I expect to see the country now. News are of no interest to you, as you are not acquainted here. I will close with compliments to all inquiring friends. Love to you all.

I am truly your brother,

FRED. ADOLPH WALTERS."

86. That the said court erred in excluding the letter written by Frederick Adolph Walters to Miss Alvina Kasten, offered by said plaintiffs in error as a part of the testimony of said Alvina Kasten, a witness produced in their behalf, which letter is as follows:

WICHITA, *Mar.* 1*st*, 1879.

DEAREST ALVINA: Your kind and ever-welcome letter was received yesterday afternoon, about an hour before I left Emporia. I will stay here until the fore part of next week, and then will leave here to see a part of the country that I never expected to see when I left home, as I am going with a man by the name of Hillmon,

who intends to start a sheep ranch, and as he promised me more wages than I could make at anything else I concluded to take it, for awhile at least, until I strike something better. There is so many folks in this country that have got the Leadville fever, and if I could not of got the situation that I have now I would have went there myself; but as it is at present I get to see the best por-
482 tion of Kansas, Indian Territory, Colorado, and Mexico. The route that we intend to take would cost a man to travel from $150.00 to $200.00, but it will not cost me a cent; besides, I get good wages. I will drop you a letter occasionally until I get settled down; then I want you to answer it (you bet, honey)—don't it? So you can see that I will not get home for a few months yet, but cannot tell how soon I will get back. I am about as anxious to see you as you are to see me, but I do not want to get back there without a cent of money, for that is what I left for (you know).

When I get back you will get to see me in about the way we parted (you bet). If any one asks you what I am doing tell them that you were not informed, for it is none of their business; and another thing: Don't ask me to write long letters, for I would without being told; so I will not waste any more paper on that subject (at present). I will have to come to a close before long, or I will have to do as that other fellow—write two sheets and swindle the p'master out of three cents, and you know I don't like to do that (pet).

Please give compliments to inquiring friends and all the love that you can embrace for yourself and nobody else. I will close for this time, love, to let you hear from me soon again.

Yours as ever, F. A. WALTER.

87. That the said court erred in excluding the evidence of Colonel Bradley, Judges Horton, Valentine, Johnson, and Humphrey to the following question:

State the reputation for professional integrity and standing of said W. J. Buchan.

88. That the said several judgments were given for the said Sallie E. Hillmon, defendant in error, when they ought to have
483 been given for the said Mutual Life Insurance Company of New York, The New York Life Insurance Company, and The Connecticut Mutual Life Insurance Company, plaintiffs in error, according to the law of the land.

The said Mutual Life Insurance Company of New York, The New York Life Insurance Company, and The Connecticut Mutual Life Insurance Company, plaintiffs in error, therefore pray that the said several judgments rendered against them respectively may be reversed and the said plaintiffs in error be restored to all things each has lost by reason thereof.

GEO. J. BARKER &
J. W. GREEN,
Att'ys for said Plaintiffs in Error.

Endorsed: Nos. 3147, 3148, 3149. The Mutual Life Insurance

Company of New York *et al. vs.* Sallie E. Hillmon. Petition in error. Filed Aug. 10, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

484 In the United States Circuit Court, District of Kansas.

SALLIE E. HILLMON, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant. } Bond.

Know all men by these presents that I, Jefferson Brumback, am held and firmly bound unto Sallie E. Hillmon in the full and just sum of ten thousand dollars ($10,000), to be paid to the said Sallie E. Hillmon, her certain attorney, executor, administrator, or assign; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with my seal and dated this 11th day of August, 1888.

Whereas lately, at a term of the circuit court of the United States of America for the eighth circuit and district of Kansas, in a suit in said court depending between Sallie E. Hillmon, plaintiff, and The Connecticut Mutual Life Insurance Company, defendant, which action was consolidated and tried with the cases of the said Sallie E. Hillmon against The Mutual Life Insurance Company of New York and The New York Life Insurance Company; and the said defendants having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, and a citation directed to Sallie E. Hillmon, citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said The Connecticut Mutual Life Insurance Company shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to
485 remain in full force and effect.

JEFFERSON BRUMBACK. [SEAL.]

Signed and sealed in the presence of—
GEO. Z. DIMMITT.

Approved by—
C. G. FOSTER, *Judge.*

STATE OF MISSOURI, }
County of Jackson. }

Jefferson Brumback, being duly sworn, deposes and says that he is the Jefferson Brumback mentioned in the foregoing instrument, and that he duly executed the same; that he is worth the sum of $30,000 over and above all debts, exemptions, and liabilities.

JEFFERSON BRUMBACK.

Subscribed and sworn to before me this 11th day of August, 1888.

GEO. Z. DIMMITT,
[SEAL.] *Notary Public.*

Endorsed: No. 3149. Sallie E. Hillmon *vs.* The Connecticut Mutual Life Insurance Company. Bond. Filed August 11, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

486 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Sallie E. Hillmon *vs.* The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, No. 3149, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

The Seal of the Circuit Court of the United States, District of Kansas, 1862.

Witness the Honorable Samuel F. Miller, senior associate justice of the Supreme Court of the United States of America, this 14th day of August, A. D. 1888.

A. S. THOMAS,
Clerk of the Circuit Court of the United States for the District of Kansas.

Allowed.
C. G. FOSTER, *Judge.*

[Endorsed:] No. 3149. The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, pl'ff in error, *vs.* Sallie E. Hillmon, def't in error. Writ of error. Filed Aug. 14, 1888. A. S. Thomas, clerk.

487 The United States of America to Sallie E. Hillmon, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for

the district of Kansas, wherein The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment entered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, this fifteenth day of August, in the year of our Lord one thousand eight hundred and eighty-eight.

C. G. FOSTER, *Judge.*

Attest:

{ The Seal of the Circuit Court of the United States, District of Kansas, 1862. }

A. S. THOMAS, *Clerk,*
By FRANK J. THOMAS, *Deputy.*

On this 1st day of Sept., in the year of our Lord one thousand eight hundred and eighty-eight, personally appeared Charles Currier before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Sallie E. Hillmon, at Leavenworth, Leavenworth county, State and district of Kansas, Aug. 18, 1888.

CHARLES CURRIER.

Subscribed and sworn to before me this 1st day of Sept., A. D. 1888.

{ The Seal of the Circuit Court of the United States, District of Kansas, 1862. }

A. S. THOMAS, *Clerk,*
By FRANK J. THOMAS, *Deputy.*

Fees, 2.00; paid by pl'ff in error.

[Endorsed:] No. 3149. The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, pl'ff in error, *vs.* Sallie E. Hillmon, def't in error. Citation. Filed Sept. 1, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

488 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and correct copy of all the record and proceedings had in said court in the action of Sallie E. Hillmon *vs.* The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, No. 3149, in said court.

The Seal of the Circuit Court of the United States, District of Kansas, 1862.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Topeka, in said district of Kansas, this 12th day of September, A. D. 1888.

A. S. THOMAS, *Clerk.*

Endorsed on cover: Kansas C. C. U. S. No. 858. The Mutual Life Insurance Company of New York, The New York Life Insurance Company, The Connecticut Mutual Life Insurance Co. of Hartford, Conn. (Consolidated), plaintiffs in error, *vs.* Sallie E. Hillmon. No. 859: The Mutual Life Insurance Company of New York, plaintiff in error, *vs.* Sallie E. Hillmon. No. 860: The New York Life Insurance Company, plaintiff in error, *vs.* Sallie E. Hillmon. No. 861: The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, plaintiff in error, *vs.* Sallie E. Hillmon. Filed October 8, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1891.

No. 181.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, THE NEW YORK LIFE INSURANCE COMPANY, AND THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT,
(CONSOLIDATED,)

vs.

SALLIE E. HILLMON.

No. 184.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD CONNECTICUT,

vs.

SALLIE E. HILLMON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

ARGUMENT OF EDWARD S. ISHAM FOR THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

EDWARD S. ISHAM,
JAMES W. GREEN,
WILLIAM G. BEALE,

OF COUNSEL.

ARGUMENT.

The assignments of error in the exclusion of evidence make necessary some connected statement of the singular history which is the foundation of this record. Between the thirtieth of November and the tenth of December, 1878, John W. Hillmon procured policies of life insurance in the New York Life Insurance Company for $10,000, and in the Mutual Life of New York for $10,000 more. He appears at the same time to have applied for still another policy for $5,000 to the Connecticut Mutual, which he subsequently, as will appear, obtained. He was living at the time at Lawrence, Kansas, and among his peculiar intimates were a man named John H. Brown and one Levi Baldwin, who was a cousin of Hillmon's wife. He was a man of no capital and of no settled occupation, and at the time he was out of any employment whatever. He had been a cattle herder and a hunter, following the unsteady and reckless life of the frontier. The premiums upon this large amount of insurance amounted to so large a sum for a man in his circumstances, that the record shows evidence adduced as to his capacity to carry so large a burden, and it is not disputed that he was a poor man, living precariously and leaving his wife destitute of any property except these policies of insurance. (*Rec.*, 231, 243.) On the seventeenth of December, a few days after the policies had been issued, he appeared at the office of Dr. Miller to correct a mistake as to his height in the matter of his insurance, and immediately after this, and before Christmas, he and John H. Brown went away together into southern Kansas. Going to Wichita by railway, they pursued their

way from there in a wagon, and after a wintry journey over the plains, returned to Wichita about the twentieth of January, 1879. Hillmon returned to Lawrence, and while there procured his policy of insurance dated March fourth, for $5,000 in the Connecticut Mutual. Brown remained at Wichita till Hillmon rejoined him there early in March, and then they set out upon their final journey into the solitudes of the wilderness, and began that history of tragedy and crime which makes up the record in this case.

Presently came the report that on the eighteenth of March Hillmon had been accidentally shot, but instantly killed by Brown in their evening camp on Crooked Creek beyond Medicine Lodge, in a remote part of southern Kansas, and that the body had been buried at Medicine Lodge. Levi Baldwin and Alva Baldwin went immediately down there, and also Theodore Wiseman and Samuel Walker went there on behalf of the insurance companies. Baldwin had made preparations for fencing and leaving the grave undisturbed (*Rec.*, 73), but the body was disinterred, and those who represented the insurance companies discovered then in their conviction that it was not the body of Hillmon at all. Thereupon it was taken to Lawrence, and another inquest was held there about the last of March or beginning of April, 1879. (*Rec.*, 76, 77, 83.)

The result of this inquest and its verdict are not shown in this record, but it does appear that something which occurred roused the apprehension of Brown, for at the end of March or about the first of April, his father went to one W. J. Buchan, a lawyer apparently of position and influence, and told him that his son John "was in trouble at Lawrence," and asked him to look after him. (*Rec.*, 79, 46.)

The information furnished by the record upon this subject is in the recital of the testimony of Reuben Brown, a brother of John H. Brown, and of Mr. Buchan himself. (*Rec.*,

69, 79.) Buchan, searching for John H. Brown, told Reuben "that he had been employed by his father and brother to get "him out of this trouble"; and Buchan had two interviews with him—the first one being "in the latter part of April, 1879, or possibly the first of May," at Lexington. At that first interview Brown detailed to him what he claimed to be the true history of his trip with Hillmon through southern Kansas, and this statement then made was substantially what was afterwards put in writing. The purpose of Buchan's employment was to procure for Brown escape from apprehended arrest and trouble, and to prevent him from being prosecuted at the instance of the insurance companies. A month or more after this, possibly in June or July, Buchan went again to see Brown at Parkville, Missouri, and this time he says that he went at the instance of one of the attorneys for the insurance companies. He saw Brown again about the fourth of September, and then Brown made affidavit to a written statement, bearing that date. This statement contained in substance the history detailed by Brown at his first interview with Buchan in the latter part of April or first of May. After this sworn statement had been made, both he and Brown had interviews with Mrs. Hillmon, and then she gave to the several insurance companies releases of her claims under the insurance policies, and ordered the dismissal of suits or proceedings then commenced or that might thereafter be commenced by any one in her behalf upon them, and directed their surrender by her attorneys to the insurance companies. It is freely stated by Mr. Buchan himself that he demanded and received compensation from the insurance companies "for the procuring said "affidavit and also the execution of the written releases," but it is obvious that such employment as he may have assumed for them was subsequent to his interview with Brown in April

at Lexington, when the history narrated in the affidavit was disclosed to him, and after he had come into communication with the insurance companies in seeking to protect Brown from the arrest and perils which he apprehended. The history narrated by Brown to Buchan in April or May at Lexington, and afterwards in the affidavit made at Parkville in September, which is found at page 61 of the record, is as follows:

"STATE OF MISSOURI, } ss:
COUNTY OF PLATTE, }

John H. Brown, of lawful age, being first duly sworn according to law, deposes and says: My name is John H. Brown; my age, thirty years. I am acquainted with John W. Hillmon, also Mrs. S. E. Hillmon and Levi Baldwin, of Douglas county, Kansas; have known John W. Hillmon for about five years; have been with him a good deal for the past two years; was with him last March, at Wichita, and on the trip from there to and around Medicine Lodge, in Barbour county, Kansas, where it is claimed that I killed him on the 17th of March, 1879. Along about the 10th of December, 1878, John W. Hillmon and Levi Baldwin talked about and entered into a conspiracy to defraud the New York Life Insurance Company and the Mutual Life—of New York out of some money, to be obtained by means of effecting a policy or policies on the life of said John W. Hillmon. Baldwin was to furnish the money to pay the premiums and to keep up the policies in case they had to be renewed. Our orginal arrangement was to get Hillmon's life insured for fifteen thousand dollars, but it was afterwards changed to twenty-five thousand dollars. Hillmon and myself were to go off south-west from Wichita, Kansas, ostensibly to locate a stock-ranch, but in fact to in some way find a subject to pass off as the body of John W. Hillmon, for the purpose of obtaining the insurance money aforesaid. We had no definite plan of getting a subject, but to in some manner get one. The final termination of the matter was the last idea thought of. Our first trip out from Wichita—the last days of December—while the snow was on the ground, we expected to find a subject that would appear to be Hillmon frozen to death, and that could not be identified only by the clothes

and papers found on it, and so I could pass—off as Hillmon. We went from Wichita to Medicine Lodge; then direct to Sun City; from there to Kinsley; from there to Great Bend, on the Santa Fe road; then to Larned, and on to Wichita via Hutchinson. Hillmon and myself were entirely alone on that trip. Iliff, of Medicine Lodge, saw Hillmon on this trip. We put up at his stable. I then stayed at Wichita until the 4th of March. Hillmon in the meantime went up to Lawrence to see his wife and to get some more money. He retured about the 1st of March, and on the 5th we left on our second trip. We went due west to Cowskin creek, then west to Harper City, then to Medicine Lodge, on by Sun City and beyond some miles; then we turned north-east down Medicine river to a camp on Elm creek about eighteen miles north of Medicine Lodge, where Hillmon is claimed to have been killed. We got there about an hour before sundown and stayed in camp until the next evening. We overtook a stranger on this trip the first day out from Wichita, about two or two and one-half miles from town, who Hillmon invited to get in and ride, and who he (Hillmon) proposed to hire and work for him on the ranch as proposed to be located. This man was with us during all this trip. Hillmon proposed to me that this man would do for a subject to pass off for him. I told him and contended with him that the man would not do to pass off for him, giving him various reasons why the man would not answer his description, and complained and objected because his proposition was to take the man's life, and I protested and said that was going beyond what we had agreed and something I had never before thought of, and was beyond my grit entirely; but Hillman seemed to get more deeply determined and more and more desperate in the matter. Pains were taken not to have more than two of us seen together in the wagon; sometimes one and then the other would be kept back out of sight. On his trip to Lawrence Hillman was vaccinated; his arm was quite bad. Hillmon kept at that man until he let him vaccinate him, which he did, taking his pocket-knife and using virus from his own arm for the purpose. He also traded clothes with him, Hillmon first giving him a change of underclothing; then traded suits, the one he was killed in. The suit he was buried in was a suit Hillmon traded with Baldwin for. This man appeared to be a stranger in the country, a sort of an easy-go-long fellow, not suspicious or very attentive to

anything. His arm became very sore, and he got quite stupid and dull. He said his name was either Berkley or Burgis, or something sounding like that. We always called him Joe. He said he had been around Ft. Scott awhile, and also had worked about Wellington or Arkansas City. I don't know where he was from, nor where his home or friends were. I did not see him at Wichita that I know of. I had but very little to say to the man and less to do with him. He was taken in charge by Hillmon, and yielded willingly to his will. I dreaded what I thought was to be done, and kept out of having any more to do with him than possible. I frequently remonstrated with Hillmon and tried to deter him from carrying out his intentions of killing the man. The next evening, after we got to the camp last named, the man Joe was sitting by the fire. I was at the hind end of the wagon, either putting feed in the box for the horses or taking a sack of corn out, when I heard a gun go off. I looked around and saw the man was shot, and Hillmon was pulling him away around to keep him out of the fire. Hillmon changed a day-book from his own coat to Joe's and said to me everything was all right and in shape just as he wanted it, and that I need not be afraid but it would be all right. He told me to get on a pony and go down to a ranch about three-quarters of a mile and get some one to come up. He took Joe's valise and started north. This was about sundown. We had no arrangements about communicating with each other. He first proposed to do so, but I told him I did not want to know where he was; that in case I should I might find out some other way. I have never heard a word from him since. At Lawrence Mrs. Hillmon gave me to understand that she knew where Hillmon was, and that he was all right. The man over whom an inquest was held at camp, afterwards at Medicine Lodge, and at Lawrence, Kansas, was the man Joe Burgis, or Berkley, killed by Hillmon as related above, and John W. Hillmon I believe to be still alive; at least he left our camp and went north, as stated above, after killing Joe. Hillmon said he would assume the name of William Marshall. Baldwin's wife and Mrs. Hillmon know all about this. In my testimony at Lawrence I stated the route taken as above described, but the man who I described as being in camp with us, and who I said went off with some wagons, was Joe, the man killed. I afterwards, some time in August, 1879, made four affidavits under great impor-

tunities from Baldwin, who came after me three different times, the last time persuading me to go with him to Kansas City, where Honorable Samuel Riggs insisted on my signing them. I don't think Mr. Riggs is aware of the facts in this case, nor the other counsel in the case.

I make the above statement in this Hillmon case as the full and true facts in the case regretting the part I have taken in the affair.

JOHN H. BROWN."

The account which Brown first gave of the body that lay dead by that camp-fire on the night of March 18, 1879, and which he gave in his deposition which was used on the trial of these causes is very different from that in the sworn statement above set forth. But from the affidavit it appears that in testimony at Lawrence he also spoke of a third man whom he "described as being in camp with them, and who, he said, "went off with some wagons." His account given in the deposition as shown in the record is found in the charge of the court and in the bill of exceptions. (*Rec.*, 45, 59.) By that account, in March, 1879, he was traveling with Hillmon through southern Kansas, in search of a location for a cattle-ranch, with a wagon team and camping outfit. They went into camp on Crooked creek, in Barber county, Kansas, on the eighteenth day of March, and in the evening of that day Brown notified parties living in the neighborhood of the camp that he had accidentally shot his companion, Hillmon, causing his instant death. The parties so notified went to the camp and found a dead body having a bullet wound in the head, lying by the camp-fire, and said by Brown to be the body of Hillmon. His statement was that after supper he went to the wagon for the purpose of removing some blankets, or other like material, therefrom; that a gun had been put in the wagon by Hillmon so that its muzzle projected over the side of the wagon, and

that in the effort to remove the blankets they became entangled with the gun and discharged it, and thereby his companion, Hillmon, was shot through the head and instantly killed. The body was left undisturbed until the morning, when an inquest was held, and was then removed to Medicine Lodge, where a second inquest was held, and it was then buried in the burial-ground at Medicine Lodge, whence it was afterwards carried to Lawrence, Kansas.

If this was the body of Hillmon, then no witness save Brown was present in that camp when the shot that killed him was fired; and in any case the only direct testimony as to the circumstances under which the person whose body was found there came to his death, or as to his identity, until after the disinterment at Medicine Lodge, comes from the lips of Brown.

These things occurred during the spring and summer of 1879, and the several actions upon these policies of insurance were not brought till July, 1880.

At that time a separate suit was brought against each of these insurance companies by Sallie E. Hillmon, the wife of the insured. Each was sued upon its own contract of insurance. Each defendant of course pleaded separately in its own case, and its pleading stated defenses as follows:

First. The general issue, a general traverse of all the averments of the plaintiff's petition.

Second. That on and before the thirtieth day of November, 1878, Hillmon, John H. Brown and Levi Baldwin, and others unknown, fraudulently conspiring to defraud the defendant, procured a large amount of insurance, to wit: the insurance represented by the several policies of the three companies, to be taken on the life of Hillmon; and that thereafter, in pursuance of the said conspiracy, they falsely and

fraudulently pretended that Hillmon was dead, and that a certain dead body which they had procured and had, was the body of the said Hillmon; whereas, the said Hillmon was not dead, but had kept himself, and was keeping himself concealed under assumed names, for the purpose of consummating the conspiracy.

Third. That for the purpose of ending a dispute and controversy upon this subject, the plaintiff, Sallie E. Hillmon, had, by an instrument in writing, executed and delivered, released and discharged all claims against the defendant upon the insurance policies, and ordered the dismissal of any and all suits and proceedings commenced, or that might thereafter be commenced, by any person, on her behalf, for the collection of the same.

On the fourteenth of June, 1882, the first of said causes came on for trial, and thereupon an order was entered by the court by which all three of them were "consolidated for trial." The order is shown in the foot-note.*

*Sallie E. Hillmon
vs.
The Mutual Life Insurance Company of New York. } 3,147.

Sallie E. Hillmon
vs.
The New York Life Insurance Company. } 3,148.

Sallie E. Hillmon
vs.
The Connecticut Mutual Life Insurance Company. } 3,149.

Now comes the plaintiff in the above-entitled actions by L. B. Wheat, John Hutchings, S. A. Riggs and R. J. Borgalthaus, her attorneys, and the defendants, by J. W. Green and Geo J. Barker, their attorneys; and, it appearing to the court that the above-entitled actions are of like nature and relative to the same question, and to avoid unnecessary cost and delay, and that it is reasonable to do so, it is ordered by the court that said actions be, and the same are hereby, consolidated for trial; to which ruling and decision of the court the defendants then and there duly excepted. And to try the issues joined comes a jury, * * * who being duly impaneled and sworn to well and truly try the matters submitted to them in this action, and a true verdict give according to the law and evidence, *and* thereupon the trial of this case is proceeded with; and, the trial not being concluded at the time of adjournment, the jurors are admonished by the court as to their duties herein, and the further hearing postponed until to-morrow. (Rec., 17 and 225.)

This trial resulted in a disagreement of the jury, as did a second trial, which terminated on the twenty-fourth of June, 1885. At the last trial, which began on the twenty-ninth of February, 1888, the defendant in each of the cases, *appearing by its own separate counsel*, presented in the cause a motion as follows: "The defendant "* * * moves, asks and requests the court to vacate and "set aside the order heretofore made, consolidating this case "for trial with two other cases, and asks and requests a sep- "arate trial hereof." (*Rec.*, 35, 150, 243.) On the same day this motion in each of said cases was overruled by the court, to which the defendant in each of said causes excepted; and thereupon the causes came on for trial, and a jury was impaneled by direction of the court, and in the impaneling of the jury each claimed the right to challenge peremptorily three jurors on behalf of each defendant. But "the court "ruled that the cases *having been consolidated*, the de- "fendants were entitled to three peremptory challenges only," to which ruling of the court each of the defendants then and there excepted. And afterwards, when the defendants were called upon to exercise their peremptory challenges, the Mutual Life Insurance Company challenged one juror peremptorily; the New York Life Insurance Company challenged one juror peremptorily, and the Connecticut Mutual Life Insurance Company challenged one juror peremptorily; and thereupon the court held that those challenges exhausted the right to peremptory challenge on the part of all of the defendants, and each of the said defendants claimed and desired to exercise the right to challenge peremptorily one or more of said jury in addition to the three already challenged, which claim was refused by the court, and to this ruling each of the defendants at the time excepted. (*Rec.*, 58.) The order by

which the severance of these causes for trial was refused, and the right to peremptory challenge of jurors denied is shown in the foot-note.*

The record shows that the defendants produced evidence to prove not merely that the body found by the camp-fire, and upon which the inquest was held at Lawrence, was not the body of Hillmon, but that they had ascertained whose body it was, and that it was the body of a young man named Frederick Adolph Walters. He had formerly lived, as appears from the charge of the court to the jury, at Fort Madison, Iowa. He

*Sallie E. Hillmon
vs.
The Mutual Life Insurance Company of New York. } 3,147.

Sallie E. Hillmon
vs.
The New York Life Insurance Company. } 3,148.

Sallie E. Hillmon
vs.
The Connecticut Mutual Life Insurance Company of Hartford, Connecticut. } 3,149.

Wednesday, February 29, 1888.

This day the three causes above named coming up for trial in pursuance of the order heretofore made by this court requiring the same to be tried at one and the same time and as one cause, and the parties thereto appearing by counsel, thereupon each of the said named defendants filed its motion asking the court to set aside the order heretofore made requiring the causes to be tried as one and asking that each case be tried separately; and the said motions, being submitted to the court, were by the court overruled, it being ordered that, in pursuance to the order heretofore made, the causes should be tried as one cause; to which rulings and order each of the said defendants at the time duly excepted And thereupon, by direction of the court, a jury was empaneled for the trial of said causes, the several defendants claiming the right to challenge three persons peremptorily for each defendant; which claim was denied, the court ruling that but three peremptory challenges could be exercised by the defendants as a whole; to which ruling each of the said defendants at the time duly excepted. And, after three parties called into the jury-box had been peremptorily challenged by counsel for defendants, each of said defendants asked to be permitted to challenge one or more jurors peremptorily, which request was refused by the court; to which ruling each of the said defendants at the time duly excepted. And after the defendants had challenged three parties peremptorily, there being in the box twelve good men * * * against whom no challenges for cause existed or were made by either plaintiff or defendants, the same were duly sworn as the jury in said causes, and thereupon the opening statements for the respective parties were made to the jury, upon the conclusion of which the court adjourned until 9:30 A. M. of Thursday. (Rec., 35, 150, 243.)

left there in March, 1878; was in Kansas in 1878 and 1879, and the last letters received from him had come in the early part of March, 1879, from Wichita, and since that time he had not been heard from by any one. These letters, which we shall have specially to consider on this hearing, were two in number, and were written from Wichita, one to his sister and one to his sweetheart, and were dated between the first and fifth of March, and each contained the remarkable statement *that he was going out into the country in the employ of a man by the name of Hillmon, who was intending to start a sheep ranch.* The Walters family, becoming alarmed by not hearing from him, caused inquiries to be made which resulted in the sending to Fort Madison copies of the photographs taken of the dead body at Lawrence, and evidence was introduced that the family and others who knew Frederick Adolph recognized the photographs as being those of Walters. (*Rec.*, 48, 49.) His brother, C. R. Walters, being upon the stand as a witness, was asked:

Q. From the time you first saw those pictures in St. Louis, or those similar to that, up to the present time, have you ever entertained any doubt about their being the pictures of your dead brother?

A. I never had any doubt.

Q. Have you any doubt now?

A. No, sir. (*Rec.*, 86.)

The sister of young Walters, Mrs. Rieffenach, being upon the stand, testified that she had received a letter, from Wichita, Kansas, written about the fourth or fifth day of March, 1879, by her brother, Frederick Adolph; that the letter was dated at Wichita and was in the handwriting of her brother; she had searched for the letter, but could not find it, it having been lost; that she remembered and could state the

contents of the letter. Being asked to state the contents of the letter the plaintiffs objected upon the ground that the same was "incompetent, irrelevant and hearsay." The objection was sustained and the defendants excepted. The following is the letter as stated by the witness, and the form of its dating may recall to mind the description by Brown in his affidavit of the man who traveled with him and Hillmon on their way to the camp at Crooked creek, that he "appeared to be a "stranger in the country, a sort of easy-go-long fellow, not "suspicious or very attentive to anything."

"WICHITA, KANSAS,
March 4th or 5th or 3d or 4th—I don't know—1879.

Dear Sister and All:

I now in my usual style drop you a few lines to let you know that I expect to leave Wichita on or about March the 5th, with a certain Mr. Hillmon, a sheep-trader, for Colorado or parts unknown to me. I expect to see the country now. News are of no interest to you, as you are not acquainted here. I will close with compliments to all inquiring friends. Love to all.

I am truly your brother,
FRED. ADOLPH WALTERS."

The other letter was to his sweetheart, Alvina D. Kasten, who was twenty-one years of age, and resided at Fort Madison, Iowa, and was engaged to him. She saw him last on March 24, 1878, at Fort Madison. He left there then and had not returned. She had corresponded regularly with him, and had received a letter about every two weeks until the third day of March, 1879, which was the last time she had received a letter from him. This letter was dated at Wichita, Kansas, March 1, 1879, and was addressed to her at Fort Madison, Iowa, and the envelope was postmarked "Wichita, Kansas, March 2, 1879"; and she had never heard from or seen Frederick Adolph since that time. The envelope con-

taining the letter, with the postmark thereon, and its address, was introduced in evidence by the defendants. They thereupon offered to read in evidence the letter itself written by Frederick to Miss Kasten. The plaintiff objected to the reading of the letter, which objection the court sustained, and the defendants excepted. The letter so offered in evidence and ruled out by the court is on page 88 of the record, and is as follows:

"WICHITA, *Mar. 1st*, 1879.

DEAREST ALVINA: Your kind and ever-welcome letter was received yesterday afternoon about an hour before I left Emporia. I will stay here until the fore part of next week, and then will leave here to see a part of the country that I never expected to see when I left home, as I am going with a man by the name of Hillmon, who intends to start a sheep ranch, and as he promised me more wages than I could make at anything else, I concluded to take it, for awhile at least, until I strike something better. There is so many folks in this country that have got the Leadville fever, and if I could not of got the situation that I have now, I would have went there myself; but as it is at present I get to see the best portion of Kansas, Indian Territory, Colorado, and Mexico. The route that we intend to take would cost a man to travel from $150 to $200, but it will not cost me a cent; besides, I get good wages. I will drop you a letter occasionally until I get settled down; then I want you to answer it (you bet, honey) —don't it? So you can see that I will not get home for a few months yet, but cannot tell how soon I will get back. I am about as anxious to see you as you are to see me, but I do not want to get back there without a cent of money, for that is what I left for (you know).

When I get back you will get to see me in about the way we parted (you bet). If any one asks you what I am doing, tell them that you were not informed, for it is none of their business, and, another thing, don't ask me to write long letters, for I would without being told if I could find the words when I write, as I am generally busy when I receive a letter from my (old woman) sweet little girl. But you know that without being told, so I will not waste any more paper on that subject (at present). I will have to come to a close before long or I

will have to do as that other fellow—write two sheets and swindle the p'master out of three cents, and you know I don't like to do that (pet). Please give compliments to enquiring friends and all the love that you can embrace for yourself and nobody else. I will close for this time, love, to let you hear from me soon again.

Yours as ever,

F. A. WALTER."

Such other parts of this history as are material on the present hearing may be considered in connection with the specific assignments of error related to them. Meanwhile it is sufficient that the record recites that it was contended by the defendants, and they adduced evidence to show that the body found by the camp-fire on Crooked creek, on the evening of March 18, 1879, was not the body of John W. Hillmon; that said Hillmon, John H. Brown, Levi Baldwin and others, confederated together for the purpose of cheating and defrauding the insurance companies by procuring insurance upon the life of Hillmon, and then pretending that he was dead, and demanding payment of the policies, although he was in fact not dead; and that the body found by the camp-fire, buried at Medicine Lodge and produced as the body of Hillmon was really that of young Walters. (*Rec.*, 43, 51, 77.) It was upon the trial apparent, as stated in the charge of the court (*Rec.*, 54), "that the conclusion must "practically "turn upon one question of fact, and all the large volume "of evidence, with its graphic and varied details, had no ac- "tual significance, save as the facts established thereby might "throw light upon and aid in answering the question, Whose "body was it that on the evening of March 18, 1879, lay dead "by the camp-fire on Crooked creek?"

First Assignment of Error.

It is assigned for error that the court erred in refusing the several motions of the defendants wherein each appeared separately by its own counsel and asked for the vacation of an order uniting these causes for trial, and for a separate trial of its own case; and also in making the order of February 29, 1888, (*Rec.*, 243), that "*the causes should be tried as one case.*"

It may justly be questioned whether any order uniting these causes for trial could properly be made against the objection of the defendant in each case. The provision of the federal statute (R. S., 921) on that subject is as follows:

SEC. 921. When causes of a like nature or relative to the same question are pending before a court of the United States, or of any Territory, the court may make such orders and rules concerning proceedings therein as may be conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice, and may consolidate said causes when it appears reasonable to do so.

Many cases may readily be imagined which might perhaps be properly "consolidated" for trial, as, for example, suits between the same parties on successive installments of rent under the same leases, or suits on separate bonds or notes of the same series or secured by the same mortgage; and in many other cases orders concerning proceedings therein might justly be made for avoiding unnecessary costs or delay in the administration of justice; but it may be seriously questioned whether the rule can properly be extended so far as to include such instances as the cases at bar. The defendant in each of these cases appeared by its separate counsel and asked for a separate trial of its cause. (*Rec.*, 57, 243.) These policies of insurance *are separate and distinct contracts.* In no one of them have these defendants any common interest.

They are different from each other in their terms, and under the pleadings are susceptible of different defenses; so that it was legally supposable when the orders objected to were made, that the defendant in each case might have defenses peculiar to its own contract, and that the jury might upon such defenses return a verdict for one and against another.

Orders adapted to promote economy and to avoid delay might have been made in these causes, concerning the use of testimony and depositions in the matter of the particular issue whether or not the assured, Hillmon, died in the month of March, 1879; and the statute authorizes such orders of that character "as may be conformable to the usages of courts." A number of cases in ejectment have been so united for trial when all depended upon exactly the same title, and that was the only issue in all the cases. (2 Sellon's Prac., 229.) In *Teal* v. *Bilby*, 123 U. S., 573, the order uniting two cases was approved by this court, but the parties were the same in both, their rights *depended on the same contract*, and the testimony in each case was pertinent in the other. It was not a case where the parties were different, where the contracts sued upon were different, where diverse issues were supposable, and where the only connecting link was the pertinence of the evidence on a single issue. In *Falls of Neuse Mfg. Co.* v. *Georgia Home Ins. Co.*, 26 Fed. Rep., 1, the consideration which underlay the orders made by the court in equity was that the several fire insurance companies, defendants in the several suits, were each liable only for a proportionate amount of the loss and so were jointly contributory to a single fund.

The power given by the statute is to make such orders and rules concerning proceedings "*as may be conformable to the usages of courts*" for avoiding costs and delay. And the power to consolidate causes "*when it appears reasonable* to do so," is of substantially the same character; for this question of reason-

ableness is one of legal judgment, and is equally affected by precedent and authority. The statute does no more in effect than to declare and confirm in the federal courts such power as existed at common law. Some precedents may serve to indicate what usages of courts had become established in this particular.

In *Camman* v. *The New York Insurance Company*, (1 Caines' R., 114) where actions had been brought on eleven policies on distinct parts of the cargo of the same vessel, the court said:

"The contracts being separate and independent it is not a case for consolidation, and not to be distinguished from that of the notes. *There never was an instance of consolidating different policies.*"

In *M'Gregor et al.* v. *Horsfall*, and *M'Gregor et al.* v. *Smith* (3 M. & W., 319) two actions were brought by the same plaintiffs against different defendants, on different policies of insurance on the same ship, and the court refused to consolidate them at the instance of the defendants *without the consent* of the plaintiffs. Cresswell said, in argument on the hearing of a rule to show cause why an order which had been made in chambers should not be set aside: "*A consolidation rule has never* "*been made without consent in cases where the actions were on* "*different policies*," and the court, PARKE, B., said:

"We think the plaintiffs cannot be bound in the way pro-"posed by this order."

In *The Corporation of Saltash* v. *Jackman*, (13 L. J. Q. B., 105), there were ten actions against commanders of different vessels, for various sums due from them independently for tolls, port dues, etc., in respect to their ships. It was held that the court had no power, without consent of the plaintiffs, to consolidate the actions at the request of the defendants, though it was sworn that the question in dispute was whether the

plaintiffs had any right to demand these tolls, and that the trial of any one action would decide it. The court, WILLIAMS, J., said:

"The first question in this case is whether I have any authority to interfere and consolidate these actions. * * * *I am not aware of any instance in which the causes of action being distinct, such a step has been taken without consent;* and that the right in dispute in each of these actions is not of necessity the same, I think, sufficiently appears."

In *Brewster* v. *Stewart*, (3 Wend. R.), the court, SAVAGE, Ch. J., said:

"The practice of the King's bench seems to extend the consolidation rule to all actions between the same parties, brought at the same time, where the causes of action might be comprised in the same declaration. This court has not gone the same length."

In *Scott* v. *Cohen*, 1 Nott & McCord, (S. C.), 414, a party brought several separate actions of dower against various purchasers of lots of land from her late husband. A motion to consolidate these causes was made in the lower court, and being refused, appeal was taken. The Supreme court said:

"When a party brings several actions the court will not compel him to consolidate, *unless it be against the same defendant* and for a cause of action of a similar nature in which the issue is the same, and *in no case* when the action is against several defendants. * * *

"And, moreover, *the usage and practice of the courts*, so far as I am conversant with it, *is in accordance with this view* of the subject."

In *Thompson* v. *Shepherd*, and two other cases, 9 J. R., 262, the court said:

"The motion for a rule that these causes be consolidated, must be denied. The notes are of different dates, for different sums, and payable at different times; and, for anything that appears, *different defenses may be* set up in the several suits. To compel a consolidation, under such circumstances, would

be going further than is the usual practice of this court or the K. B. in England (1 Caines' Rep., 114; Imp. K. B. Prac., 668; 1 Tidd, 556;) though the case of *Cecil* v. *Briggs*, (2 Term. Rep., 639), would seem to extend the consolidation rule to all actions between the same parties, and brought at the same time, where the causes of action might be comprised in the same declarations."

To the same effect is also *Worley et al.* v. *Glentzworth*, 10 N. J. (Law), 241.

In *Holmes* v. *Sheridan et al.*, 1 Dillon, 351, DILLON, J., directed that two actions should be not consolidated, but tried at the same time and to the same jury. This, however, was because these actions were between the same parties, and both arose out of the same transaction, and might originally have been joined in one suit. See, also, *Ferrett* v. *Atwill*, 4 N. Y. Leg. Obs., 215; *Wolverton* v. *Lacey*, 18 Monthly Law Rep., 672; *Andrews* v. *Spear*, 4 Dillon, 470.

Why should the plaintiff, *whom the law would not allow under any form to sue these defendants together*, be able afterwards to compel them, by an order of court against their will, *to try* their separate causes jointly, and *as if they had been actually* made one party defendant to a single cause?

We can find no trace of any precedent or of any "usage of courts" at all analogous to the order made in this instance. Moreover, there may be a substantial difference between such orders as have been suggested, made to save cost and avoid delay, or an order for the trial of separate causes before the same jury, and an order like this for the consolidation of distinct causes "*to be tried as one cause.*" The order made on the last trial below (*Rec.*, 243) goes farther than any former order appearing in the record, in that it does order "the causes to be tried as one cause." The scope and consequences of such an order are illustrated in the next assignment of error.

Second Assignment of Error.

It is assigned as error that the court, in the impaneling of the jury erred in refusing to allow the defendant in each of the causes three peremptory challenges of jurors, and in limiting them all to three peremptory challenges only.

The conditions under which the rulings excepted to were made, appear in the record at pages 58 and 254, where the statement of the court is as follows:

"Be it further remembered that in the impaneling of the jury, the defendants each claimed the right to challenge peremptorily three jurors on behalf of each defendant. Thereupon, the court ruled that, *the cases having been consolidated*, the defendants were entitled to three peremptory challenges only; to which ruling of the court each of the defendants then and there duly excepted.

Be it further remembered that when the defendants were called upon to exercise their peremptory challenges, the Mutual Life Insurance Company challenged one juror peremptorily, the New York Life Insurance Company challenged one juror peremptorily, and the Connecticut Mutual Life Insurance Company challenged one juror peremptorily; and thereupon, the court held that those challenges exhausted the right of peremptory challenge on the part of the defendants, and each of the said defendants claimed and desired to exercise the right of challenging peremptorily one or more of said jury in addition to the three already challenged; which claim was refused by the court, and to which ruling each of the defendants at the time duly excepted."

The matter is governed by the statute of the United States, but the "consolidated case" is not an actual, but only a fictitious one, the creature of an order of court for temporary purposes of form, and the federal statute prescribing the number of challenges by joint defendants does not apply to it.

Peremptory challenges existed as a right at common law in criminal, but not in civil cases. Later, by act of parliament the

right was given in civil cases. Being thus established by law, the right was of the same nature, and had the same quality in both classes of cases. It was equally definite and absolute; it was equally entitled to be upheld and kept inviolate, and it has so rarely failed to find protection that the instances which chiefly illustrate the right are in the older and consequently the criminal cases, and it is in these cases that are found the clearest indications of the constitutional character, the inviolable quality and the limitations of the right.

Consideration was given in the earliest times to the effect upon the right of challenge of joint trials of persons indicted together. If tried separately, each person was certainly entitled to his full number of challenges; but if tried together, was the right of each person abridged? From the beginning this right of peremptory challenge was established as a personal right which could not be taken away except by the voluntary consent of the individual entitled to it. It was questioned whether the court had power against the will of the prisoners *to sever the panel* and to try them severally if they insisted upon their right of separate challenges, and it was decided upon full consideration that the court had this power. (*U. S.* v. *Marchant*, 12 W., 481.) The court had equally the power to try them together in its discretion, but in that event it must allow each one his full number of challenges. If they asked for a joint trial, a condition might be imposed that they should waive the right and unite their challenges. But they could not be compelled to do so, and unless the court was prepared in trying them jointly to grant each person the full exercise of his personal right, it must sever the cause and try each one separately.

The right given by act of parliament in civil causes stood of necessity upon the same footing. When an act of parliament declared simply that a party in a civil cause might have so

many peremptory challenges, the right conferred found its precise definition and exposition in the existing law upon that subject. The statute extended the right, already existing in certain recognized cases, into others, namely, from criminal cases into civil cases also; and the right thus extended into civil cases had its definition and conditions already established by law. They existed by the same law which created the court, and to which the court was equally subordinate. Limitations which parliament refrained from imposing could not be imposed by the court. If parliament reduced the number of challenges merely, and refrained from other limitations, the power of the court ended as of course on the line drawn by parliament. The court therefore in the absence of express statute had and has no more power to deprive a person of his challenges than to deprive him of his jury.

In *U. S.* v. *Marchant*, 12 W., 480, STORY, J., said: "The Crimes Act of 1790 (c. 9) provides in the twenty-"ninth section for the right of peremptory challenge in capital "cases; and *this right, to the extent of the statute, must, in all* "*cases be allowed* the prisoners, whether they are tried jointly "or separately. * * * This is the rule clearly laid down by "Lord Coke, Lord Hale and Sergeant Hawkins, and, indeed "by all the elementary writers; Hawk., P. C. b. 2, c. 41, s. 9; "2 Hale's Pl. C., 268; Co. Litt., 156; Beauchamp's case, 9 "Edw. IV. folio 27, pl. 40; Plowd., 100; Kelyng, 9." See, also, Thompson and Merriam on Juries, §§ 162, 163.

It is clear that in this "consolidated" case the right of separate challenge remained just as important to each original defendant as it would have been on separate trials. It was necessary, of course, and the court ordered (*Rec.*, 43) that there should be a separate verdict in each case; and, therefore, the composition of the jury was of precisely the same practical importance as if each case was being tried separately.

The contract of the Connecticut Mutual for example was made separately, and later than the others and through different agents. It was different from the others in its provisions, and was susceptible of different issues and defenses under the pleadings. The personal prejudice or enmity of a juror against one of the insurance companies or its agent, might involve all the other companies in peril. "The court, of course," says Judge COOLEY, "when the jury is being empaneled, cannot "know what the evidence is to disclose, or how prejudices are "likely to affect the issues." And also, he says: "It could "not be assumed by the court * * * that the issue made "by the evidence would be the same, and subject to the same "and no other prejudice." *Stroh* v. *Hinchman*, 37 Mich., 493, 494.

In fact, where a consolidation of cases is permissible at all, the union is one of *form* merely, and for purposes solely of economy or convenience. It is an underlying rule and condition, that no rights of the parties nor any substantial interest shall be affected injuriously.

In *Sodousky* v. *McGee*, 4 J. J. Marsh., 269, the court said:

"In criminal cases, if several persons be tried on a joint indictment by the same jury, each has a separate and independent right to his challenges, whether peremptory or for cause; *because, although the trial is joint in form*, it is in substance and effect several. The verdict must be several. Each must be punished according to his own guilt, and not according to that of another; and the punishment is individual and several, not joint. *There can be no contribution, no substitution.* Hence, to avoid the inconveniences which would result from separate challenges in the same trial, it is the practice of courts of criminal jurisdiction to order separate trials, unless the parties jointly indicted will waive their right to separate challenges."

While other reasons may apply, as suggested by the court, in civil cases where the parties tried jointly are *contributory*, (*Falls of Neuse Mfg. Co.* v. *Ins. Co.*, *supra*), the statement

above quoted is an accurate one of the relations of the defendants below in the present case. The trial is joint *in form* only, and even that is compulsory and not consented to. In substance and effect the trial is several; each defendant is separately sued and pleads and defends separately; *each is holden upon his separate contract, or not at all;* there is no joint liability; there can be no joint judgment; there may be separate and different defenses; separate and personal prejudices and need for the personal exercise of peremptory challenge; and there must be separate verdicts and separate judgments.

When joint defendants have asked to be tried together, and the court as a condition has required them to unite in their challenges, the right can be lost only by their voluntary consent. They cannot be compelled to abandon a right which may be vital to their safety.

In *State* v. *Stoughton et al.*, 51 Vermont R., 365, the court said:

"It was discretionary with the court whether to grant them separate trials or not; and, although it is allowable to require that when respondents are tried jointly they shall join in their challenges, to avoid the delay before alluded to, the court cannot compel them so to do. It is a right that each respondent is entitled to, and which can only be lost or waived by some voluntary act. The right of peremptory challenge is of the same practical importance to each as if he were being tried separately; and by going to trial jointly they do not waive that right. If the state is not prepared to accord the right to each in a joint trial, it should demand a severance and try them separately, unless they stipulate to unite in their challenges. Without such stipulation the court cannot compel them to do so."

In *Cruce* v. *The State*, 59 Georgia R., 90, the court said: "Were it impossible to afford a joint trial, on the terms of "allowing to each prisoner his full measure of challenges, *the* "*consequence would be*, not that he should lose any of his

"challenges, but that he *should be tried in some way in which* "*all his challenges could be duly allowed.*"

The case of *Stroh* v. *Hinchman*, 37 Mich., 490, shows how inviolable in a civil cause, except by *consent*, is the right to peremptory challenges even under a statute declaring that "In "all civil cases *each party* may challenge peremptorily two "jurors." This phrase "each party" is usually construed to include as one party all the persons on each side. 44 Fed. Rep., 884. In that case one of the defendants challenged two jurors; the other defendant then challenged one, but the court overruled the challenge on the ground that the two defendants constituted but one party. In the opinion of the court on appeal, COOLEY, C. J., after referring to the case of *Stone* v. *Segur*, 11 Allen, 568, said:

"Now a rule is to be judged by the reasons that may be assigned for it; and judging this supposed statutory rule by that standard, the conclusion of the court in *Stone* v. *Segur*, where confined to the facts of that case, seems entirely sound and reasonable. There the defendants had united on one issue, presented by the same counsel, and had contented themselves with a joint defense. They were consequently by their own voluntary action but one party before the court, and had but one mouthpiece. Any challenge made on behalf of one must necessarily be on behalf of the other also, and when the statutory number had been made the right of each was exhausted, even though all had been made at the suggestion of one of the defendants only. It was immaterial who had suggested them when they were thus made in the name and on behalf of all.

In a case like the present it is different. * * * The two have not only pleaded separately by different counsel, but it is legally supposable that each may have a distinct and separate defense, and that the jury may return a verdict for one and against the other on some of the notes counted on. It could not, therefore, be assumed by the court that the controversy in respect to all the notes would be the same as between the plaintiff and each of the defendants,—that the issue made by the evidence would be the same, and subject to the same and no other prejudice. * * *

In our opinion the statute cannot have a reasonable construction, or one which will effectuate its intent, unless the right of separate challenge is allowed to each defendant who pleads separately by different counsel. Any other construction leads not only to injustice, but under some circumstances to absurdities."

In *The State* v. *Durein*, 29 Kansas R., 692, it was said by BREWER, J., in speaking of the case of *Stroh* v. *Hinchman*, above cited, that "probably in civil cases, the con- "struction placed by the Michigan court upon its statute would "be a fair interpretation of the statute of Kansas," and he "said, page 691:

"In the case of *The State* v. *Stoughton*, 51 Vt., 362, it was held, that one, indicted with others, does not waive his right to the statutory number of peremptory challenges by consenting to be tried with them. If one consenting to a joint trial does not waive this right, *a fortiori*, one who is compelled against his will to a joint trial ought not to be deprived of it."

Such is the general rule of law upon this subject apart from special provisions of federal statute. Section 819 of the Revised Statutes of the United States contains the following provisions:

"When the offense charged is treason or a capital offense, the defendant shall be entitled to twenty and the United States to five peremptory challenges. On the trial of any other felony, the defendant shall be entitled to ten and the United States to three peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under this section."

We have to consider the question, therefore, How far has the provision that "where there are several defendants or sev- "eral plaintiffs, the parties on each side shall be deemed a "single party for the purposes of all challenges under this sec-

"tion," curtailed the right which would otherwise exist in this present cause? The same effect is given by express provision here which in other statutes is given by construction to the phrase "each party;" and the *principle is still applicable* which was applied in *Stroh* v. *Hinchman*.

But in any event this provision of the statute has no application to a situation like the present. The statute refers, of course, to a single action, in which the plaintiffs have voluntarily joined, or in which the defendants are jointly sued upon the same cause of action. But here before the court, we have not one case with several defendants to the same action, but three separate cases against three separate defendants, based on three separate contracts, and the three separate defendants have no common interest in either one of the causes of action. Each has pleaded separately, and each by separate counsel has moved the court to keep separate these causes for trial, and to give the defendant in each cause his full statutory number of peremptory challenges. There has been no consent to joinder for trial, or waiver of the right of challenge. On the contrary, the suits were compulsorily united, while separate verdicts and separate judgments were inevitable. It is going far beyond the range of the statute to treat these separate defendants, in separate suits, as if they were joint actors in one transaction, or joint parties to a single contract, or joint defendants to a single action. These defendants are not sued jointly; they are not "several defendants" in any case, and are not in the position of parties described in the statute which refers to "cases where there are several defendants."

The power of the court to unite causes for trial is confined to orders effecting a trial joint in form merely, for convenience or economy, and it does not extend to the extinguishment of substantial rights of defendants which are not matter of form and would have been undeniable in each case except for the consolidating order of the court.

In the absence of this statutory provision the right of a defendant pleading separately when sued jointly with others, could be lost only by his voluntary action and consent. He could not be compelled to abandon it. Though under this statute all the defendants to a single suit, though pleading separately, should be deemed one party in respect to the right of challenge, it must still follow and be true that when several causes, in which the defendants are different, are grouped for trial and tried as one cause, the right of challenge of the defendant "party" in each original suit will remain unimpaired. The defendant, *in each of the original causes*, is still a separate defendant in the *composite* or conglomerate cause, and must be given the full right of challenge or else allowed a separate trial. If in one of the original cases there were several defendants, that group of defendants must still as one "party" retain its full right of challenge in the *composite* case. The so-called consolidated cause does not exist at all as a cause by any action of the parties. It is a hypothetical cause, a fiction, existing only under an order of court and in theory. No compulsion of logic, and no degree of mental confusion can make the New York Life and the Connecticut Mutual Life Insurance Companies and the Mutual Life Insurance Company joint defendants on either of their three separate contracts, or "several defendants" in any cause which any plaintiff ever brought. That the court has, by its order, united the cases for the purpose of a trial joint in form, does not extinguish the fact that the defendants are really separate parties to separate suits, exposed to separate and individual prejudices, and can only be affected by separate verdicts and separate judgments. The terms of the statute may apply to each of these original and separate cases, but the court cannot, by an order, make out of a group of actual cases another distinct, actual case within the meaning of this statute—a case which the parties did not

make for themselves, and which by law they never could have made for themselves.

Nevertheless this is precisely what the court seems to have understood that it had done. The court has construed its own order that "the causes should be tried as one case." In the bill of exceptions it is recited that "the court ruled that *the "cases having been consolidated*, the defendants were entitled to "three peremptory challenges only"; to which ruling of the court each of the defendants excepted.

That the cases had been *consolidated* is assigned by the court as its reason for refusing the right of challenge. The proposition asserted is that the case is become the same as if it had been originally and properly brought against all of the defendants jointly. The understanding of the court was plainly that by the order of consolidation, these three cases became identically the same in this respect as if the three defendants were sued jointly in one suit, and that they were to be governed by the rule that would, under the statute, apply in that event. There is no authority of law by statute or otherwise, to so substantially consolidate causes so distinct. Any joinder for trial must be a joinder in form only. In substance and effect, the cases are as separate as the contracts and the judgments. The court may, if it can, save costs and delay; but it may not deprive the separate defendants of their individuality, nor of the personal rights which belong to them as distinct parties defendant to separate actions on their several distinct contracts. An order of court is powerless to take away the statutory right of challenge in any case; and this which cannot be done directly can as little be done by indirection through an order uniting causes in form for trial. It remains true that the challenges *cannot be taken away by an order of court* directly or indirectly.

The statute applies in terms to single cases, where as orig-

inally brought there are "several defendants." Except as limitations are clearly contained within itself, it *recognizes generally* the right of challenge in civil cases. What is recognized by the statute the court has no power to take away.

The present federal statute recognizes, in civil cases, the right of challenge as that right is defined by law, and subject only to those limitations which are expressed in the statute itself. That statute has once expended its lawful force upon these cases in their original form, and upon the defendants to them. No mere order *of court* can give it a similar operation a second time to further curtail the privilege of defendants in the same causes. The force of the *statute* is exhausted when it has limited to three the challenges of the whole group of defendants in a case. It is impossible that *the court* can afterward by an order unite a dozen such cases for trial, and so further reduce the challenges of all the groups of defendants in the separate cases to three. The number of challenges can be reduced only by statute, and when the effect of the statute ceases, the court and its orders are powerless on the subject.

In the *United States* v. *Shackleford*, 18 How., 588, it was held that where the act of congress of 1790 had expressly recognized the right of peremptory challenge, it *could not be taken away by the court* under power conferred upon the courts of the United States to conform the impaneling of the jury to the laws and usages of the respective states. Certainly the express terms of the statute should not be extended by *the court*, and we may recall and apply to this "consolidation" the language of BREWER J. in *State* v. *Durein*, *supra;* that, "If one consenting to a joint trial does not waive this right, *a* "*fortiori*, one who is compelled against his will to a joint trial "ought not to be deprived of it."

This application of the statute may be tested by a consideration which illustrates how effectively these several defendants are

deprived by the order of the court, and by that order only, of a substantial right which is conceded to them by the statute. As defendants, each to its separate action, they would severally have the full right of challenge given by the statute. *Either* jointly or severally, the right must be *effectively* conceded. It cannot be denied or defeated. But it is denied out and out when the court compels joinder of the cases against objection of the defendants, and then compels them, also against objection, to unite their challenges as one party defendant, or lose the right altogether. That is the alternative, if, in such cases, the right is not effectively given, either jointly or severally. Suppose the defendants in the three several suits *cannot agree* upon their challenges. Some known prejudice, or enmity, or controversy with its agents might make necessary to the safety of one of these insurance companies a challenge, which might be against the will of the other companies, and would exhaust their protection in similar situations. How, then, are the challenges to be apportioned where the defendants to this artificial case cannot agree? Who has a right to apportion them? Employing the language of Judge COOLEY, in *Stroh* v. *Hinckman*, *supra:* "Suppose each of "the three defendants demand the right of a challenge, and "each fix upon different persons to set aside. What author-"ity has the court to apportion the right, or upon what prin-"ciple can it be done, if it had the authority?"

If each defendant is given one, then neither will be the *joint challenge* of the defendants, nor a challenge of *joint defendants*. Suppose there were four cases here consolidated against four separate parties. If the parties could not agree, one must lose its challenge altogether. This does not conform to any rational construction of the statute, for the privilege conferred may be defeated altogether, not by the statute but by the action of the court.

Third Assignment of Error.

The court erred in refusing to allow the witness, Elizabeth Rieffenach, to state the contents of the letter received by her from Frederick Adolph Walters. The witness, Mrs. Rieffenach, was the sister of Walters, and she testified that she had received a letter written from Wichita, Kansas, about the fourth or fifth day of March, 1879, by her brother, Frederick Adolph; that the letter was dated at Wichita, and was in the handwriting of her brother. She had searched for the letter, but could not find the same, it being lost; that she remembered and could state the contents of the letter. She was then asked by the defendant's counsel to state the contents of that letter. The plaintiffs objected "on the ground that the same is incompe-" tent, irrelevant and hearsay." The objection was sustained and the defendants excepted.

This letter is shown on pages 87 and 283 of the record, and also on page 13 of this argument, and is as follows:

"WICHITA, Kansas, March *4th or 5th or 3rd or 4th*—I don't know—1879.

"DEAR SISTER AND ALL: I now in my usual style drop you a few lines to let you know that I expect to leave Wichita on or about March the 5th, with a certain Mr. Hillmon, a sheep-trader, for Colorado or parts unknown to me. I expect to see the country now. News are of no interest to you, as you are not acquainted here. I will close with compliments to all inquiring friends. Love to all.

"I am truly your brother,

"FRED. ADOLPH WALTERS."

The court also erred in excluding the letter written by Frederick Adolph Walters to Miss Alvina Kasten, offered by the defendants below as a part of the testimony of said Alvina Kasten, a witness produced in their behalf. The letter is

shown on pages 88 and 284 of the record, and on pages 14 and 15 of this brief.

The record furnishes no further indication of the ground upon which these letters were excluded than the simple statement of the plaintiff's objection that the matter offered as evidence was "incompetent, irrelevant and hearsay," and that the objection was sustained. Of course, the parts chiefly material are, in the first letter, the following statement:

"I now in my usual style drop you a few lines to let you know that I expect to leave Wichita on or about March the 5th, with a certain Mr. Hillmon, a sheep-trader, for Colorado or parts unknown to me."

And in the second letter the following:

"I will stay here until the fore part of next week, and then will leave here to see a part of the country that I never expected to see when I left home, as I am going with a man by the name of Hillmon, who intends to start a sheep ranch, and as he has promised me more wages than I could make at anything else, I concluded to take it, for a while at least, until I strike something better."

We submit that the evidence offered is not irrelevant and it is not hearsay. If it is neither of these it is not incompetent. An issue made by the pleadings is that the plaintiff was fraudulently trying to impose upon the insurance companies the body of some other person, as being that of Hillmon. The defendants seek to prove that the body of Walters had been procured, and that the plaintiff was using it for that purpose. Under that issue any fact that tends to make it probable that it was the body of Walters supports the issue and is relevant.

If it is competent to show that he went with Hillmon, then we may equally show any actual *fact* which makes it probable that he went, as, for example, that he contemplated going and had his mind upon the subject. That will be proved if the *fact* be shown by these letters *that these statements were writ-*

ten. The rule is thus stated in Sir James Stephens' Introduction to his work on Evidence at page XVIII:

"The facts which may be proved are facts *in issue*, or facts *relevant to the issue.*

Facts in issue are those facts upon the existence of which the right or liability to be ascertained in the proceeding depends.

Facts *relevant* to the issue are facts *from the existence of which inferences as to the existence* of the facts in issue may be drawn.

A fact is relevant to another fact when the existence of the one can be shown to be the cause or one of the causes, or the effect or one of the effects, of the existence of the other, or *when the existence of the one, either alone or together with other facts, renders the existence* of the other highly *probable*, or improbable, *according to the common course of events.*"

On page 4 of the treatise, article 1, the rule is further stated:

"The expression 'facts in issue' means:

(1.) All facts, which by the form of the pleadings in any action, are affirmed on one side and denied on the other. * * *

The word "relevant" means that *any two facts* to which it is applied are *so related to each other that according to the common course of events one either taken by itself or in connection with other facts proves or renders probable* the past, present or future existence or non-existence of the other."

That which is sought to be shown is not a mere report; it is not what somebody said about Walters or Walters about Hillmon. It is sought to introduce original evidence of a substantive fact. That fact is *that these statements were written.* Greenleaf Ev. §§ 100, 101. That they were written proves conclusively that Walters *had it in his mind at that time* to go with Hillmon on his journey, for *otherwise he could not have written them.* That when he wrote these statements he had the project in mind is as distinctly a fact of nature as the current of a stream. It is "a pure crude fact" as much as his

being then in Wichita or that he was alive was a fact. The letters are evidence that he was in Wichita when he wrote them, and the statements are conclusive proof that he had this idea in mind when he wrote them. One fact is as competent and relevant as the other. In that aspect it is not merely the matter contained in the writing which is important and admissible, but the fact that such a statement was written at that time when, according to the common course of events and in the usual course of his correspondence with his family, a statement of that character *would be made if the principal fact involved were really true.* It may be taken as a circumstance in connection with all other relevant circumstances to make up the body of evidence. *Deitsch* v. *Wiggins*, 15 Wall., 540. The matter to be established is that the dead man by the camp-fire on Crooked creek was Walters; for if it was Walters it was not Hillmon. Hillmon was to rejoin Brown at Wichita, and go out from there over that route about the fifth of March, on that alleged search for the ranch location. Was it not competent and relevant to prove that at and before that very time Walters was at Wichita? That *was* proved by the fact that he wrote those letters from that point at that time. *Gaines* v. *Relf*, 12 H., 534. That they were his letters was proven and is not disputed, and Walters is dead. Does it not advance the mind one step further along the line of evidence to prove not only that he was then in Wichita, but that he had then in mind an engagement to go on with Hillmon? Does it not increase in any mind the probability of the hypothesis that he went with Hillmon, and that it was he whose body lay at Crooked creek? There must be but one answer to this while the human mind remains what it is. Then, if the naked fact that Walters, at Wichita, had this project in his mind enhances this probability or possibility it is certainly evidence which is relevant and is competent.

It would be competent to prove that Walters went out with Hillmon; and if he went that act of going would have an inseparable concomitant in the fact that about the time of starting he had had the project in mind; and on the other hand, that he had the project in mind at that time supports the probability that he went. The link is as inevitable as the order of any two facts in nature. The matter shown by these letters, therefore, is not hearsay, but an original and independent fact, admissible in proof of the issue. Greenleaf on Evidence, Section 100. In *Jackson* v. *Boneham*, 15 J. R., 226, the plaintiffs claimed in ejectment as heirs of one Moses Miner. As part of the evidence to show his death his sister as a witness, "*proved a letter* from Miner to his "mother, dated at New York, in September, 1775, *in which* "*he says* that 'he had got to be a soldier.'" This was introduced as one step in the line of evidence to show that he was afterwards killed.

In *Doe dem. Patteshall* v. *Turford*, 3 *B* & Ad., 890, may be found a clear illustration of the principle under which this evidence is competent and admissible. In an attorney's office it was usual for the clerks to serve notices to quit on tenants, and to endorse on duplicates of such notices the fact and time of service. On one occasion, the attorney himself prepared a notice and took it with him together with two others prepared at the same time. Two of the notices were proved to have been delivered, and he returned to his office in the evening, having endorsed on the duplicates of each of the three notices a memorandum of its having been delivered. Question was whether the endorsement, proved after the attorney's death to have been in his handwriting, was ample evidence to prove the service of the third notice. The court said:

PARKE, J. "The only question in the case is, whether the

entry made by Mr. Patteshall was admissible in evidence, and I think it was, not on the ground that it was an entry against his own interest, but because the fact of such an entry was made at the time of his return from his journey, was one of the chain of facts (there are many others) from which the delivery of the notice to quit might lawfully be inferred. That the delivery might be proved by direct evidence, as by the testimony of the person who made it, or saw it made; it might be proved also by circumstantial evidence, as many facts ordinarily are which are of much greater importance to the interests of mankind, and followed by much more serious consequences. In this point of view, it is not the matter contained in the written entry simply which is admissible, but the fact that an entry containing such matter was made at the time it purports to bear date, and when in the ordinary course of business such an entry would be made if the principal fact to be proved had really taken place. * * * The learned counsel for the defendant has contended that an entry is to be received in two cases only; first, where it is an admission against the interest of a deceased party who makes it, and secondly, where it is one of a chain or combination of facts, and the proof of one raises a presumption that another has taken place; but it is contended that the facts here do not fall within the latter branch of the rule, because Mr. Patteshall, who served the notice, was not shown to have been in the habit of serving notices. I agree in the rule as laid down, but I think that, in the second case, a necessary and invariable connection of facts is not required; it is enough if one fact is ordinarily and usually connected with the other: and it appears to me that the present case is not, in its circumstances, an exception to that part of the rule."

TAUNTON, J. "I am of the same opinion. A minute in writing like the present, made at the time when the fact it records took place, by a person since deceased, in the ordinary course of his business, corroborated by other circumstances which render it probable that that fact occurred, is admissible in evidence. Those corroborating circumstances must be proved; and here many such circumstances did appear."

Precisely in accord with what is said by PARKE J., it might be proved by direct evidence that Walters went out with Hillmon, and it might also be proved by circumstantial evidence,

namely by the proof of concomitant facts not only consistent with that hypothesis, but irreconciliable with any other. In *Stapylton* v. *Clough*, 2 El. & B., 937, Lord CAMPBELL, C. J., said:

"I agree with the decision in *Doe dem. Patteshall* v. *Turford*, and other cases of similar effect. Those are cases in which evidence is admitted which satisfies the legal test of sincerity, and will presumedly assist in the investigation of the truth."

The statements of these letters satisfy as evidence the conditions, *and* "*the legal test of sincerity*" suggested by Lord CAMPBELL. They were written at a time and under conditions which render collusion impossible; and they were written in the discharge of duty, in the ordinary course of conduct, in the ordinary course of correspondence with the persons to whom they were addressed. The most absolute guaranty of their sincerity surrounds them, for it would be improbable and unnatural that they should not have been written, and at the time they were written, if the principal fact to which they point was actually true.

From the nature of the case such a fact must be evidence. It would be in any practical affair of life an important factor in forming the sort of judgment which governs rational action. Suppose an agent of police employed to search for Walters had come to know that up to the fifth of March, he had been at Wichita, and the trail at that point was lost. Then an assistant learns the fact that at that very time Walters had entertained the project of going out with Hillmon, should he communicate this to the agent or conceal it? What would be thought of him if he suppressed it, with the explanation that it seemed to him to have no connection with the matter, to be an irrelevant fact liable to confuse and to mislead the agent? We surely need not stop to frame the answer; but if the knowledge of that fact would be proper and useful to the agent, why was

it not proper and important for the jury engaged upon the same identical inquiry. Can it be rationally said that it would not throw any light upon the path at all, that it would not enhance the probability that Walters might have gone with Hillmon? Was the jury materially assisted in its inquiry by the suppression of the absolutely certain fact that Walters had contemplated going out with Hillmon on the fifth of March? The letters are conclusive and *original* evidence that these statements *were written*, and being evidence of that fact they ought not to have been excluded.

These letters are clearly competent evidence to prove more than the fact that they were written, and that Walters had in mind the idea of going out with Hillmon. Adjudicated cases establish the admissibility of these letters as circumstantial *evidence that he went*. The written statements are objected to as hearsay. But even if that were so they would be competent as part of a body of evidence to prove under an issue made by the pleadings, that it was Walters' body that lay dead in the camp on Crooked creek and that the plaintiff is fraudulently offering it as the body of Hillmon; for hearsay is admissible to prove the death of a person, and when and where he died. The claim is that Walters is dead and that he died at Crooked creek, and that his family identified him as the man who was killed there.

In *Jackson* v. *Boncham*, *supra*, the witness, speaking of her brother, said that "she heard, in 1776, that he was with the "New York troops, but never heard of him again until four-"teen years after the war, when she was told that he had been "killed; that the general opinion in the family was that he "was dead." The court said:

"The hearsay evidence offered and objected to, of *Moses Miner being with the New York troops*, and of his being killed in the army, was admissible for the purpose of showing

his death, and the place where he died, but would not, of itself, afford any evidence of his having served in the army as a soldier entitled to bounty land."

The letter of Miner to his mother in which he said that "he "had got to be a soldier," and also the statement of his sister that "she had heard that he was with the New York troops," were admitted as links in the chain of evidence that being with the troops he was killed. *Doe* v. *Griffin*, 15 East, 293.

In *Gaines* v. *Relf et al.*, 14 How., 534, the point in issue was whether Zulime was the legal wife of Clark. That was founded on the charge that her former marriage to Desgrange was void, he having already a wife then living. This claim was supported by evidence tending to show that Desgrange had been convicted of bigamy and had fled to France to escape punishment. To contradict this, a letter was offered from Desgrange to Clark, Desgrange being then dead and Clark also, to show by their contents his state of feeling and his relations to Zulime. This court said:

"The letter of Desgrange to Clark, of July, 1801, from Bordeaux, is objected to as incompetent. We think it is competent to prove the state of feeling, affection and sympathy of Desgrange towards his wife, when he wrote the letter; and, also, the date is evidence to prove where the writer was, and the time when he wrote. There is no ground to suppose that the letter was written collusively. It appears to have been ingenuous, and honestly intended. The doctrine, why such a letter is admitted, is laid down accurately in 1 Phillips' Ev. by Cowen, 189, 190."

Here also as in *Gaines* v. *Relf*, "there is no ground to sup- "pose that the letters were written collusively." Not merely that, either, for the nature of the case precludes the possibility of collusion. It is impossible to over estimate the grave importance of this evidence. It comes from a time anterior to any dispute or controversy. It is evidence of acts and a purpose of Walters' existing sixteen or seventeen days before that

body lay dead in the camp. Its significance is something the mind can hardly resist, and its exclusion or admission may well have been the point upon which the conclusion hung.

See also,

Fennerstein's Champagne, 3 Wall., 145.
Walton v. *Green*, 1 C. & P., 621; [12 E. C. L. R., 352.]
Winder v. *Little*, 1 Yeates, 152.

Fourth Assignment of Error.

The court erred in permitting the plaintiff on cross-examination to ask the witness, C. R. Walters, if he had not made certain statements in a letter then in the hands of the plaintiff's counsel, instead of offering the letter itself as the best evidence of its contents.

The substance of this assignment of error is contained in the specifications numbered 75 to 80, found in the record on page 98, which are assignments of error made on the bill of exceptions. The testimony of the witness pertinent to this and to the next following assignment of error is given in the foot-note.*

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*C. R. Walters, called as a witness for the defense, testified: that he was a brother of Frederick Adolph Walters; that his father formerly resided for many years at Fort Madison, Iowa; and that he last saw his brother Frederick in the year 1878. He testified that he corresponded frequently with his brother, and had received no letters from him since 1879. He testified that the relations of his brother to himself and to the remainder of his family were of the friendliest character; and that since then he had regarded his brother Frederick Adolph as dead.

Thereupon this further question was put to the witness:

"Now you may state, if you know, how the other members of the family—your father, mother, and sisters—have regarded your brother Frederick Adolph; whether they have regarded him as being dead since they received those photographs?

(Objected to as incompetent, irrelevant, and hearsay. Objection sustained, and the defendants then and there duly excepted.)

* * * * *

On further [*cross*] examination, this question was asked the witness:

This witness, C. R. Walters, was produced by the defendants to testify and was examined upon the subject of the identity of the man who was killed and Frederick Adolph Walters. He was the brother of Frederick Adolph, and one of the most

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Is it not a fact, Mr. Walters, that in 1880 you had no knowledge that your brother had been west of this city (Topeka); that in 1880 you stated in your letter—in one of your letters—that you understood that he died near the city of Topeka?

(Objected to as incompetent, irrelevant, and immaterial. Objection overruled; to which the defendants duly excepted.)

A. Well, in 1880 I didn't know the location of Topeka. I didn't know whether Topeka was four hundred miles from Kansas City or forty miles.

Q. The question I am asking now is, if it was not your understanding in 1880 that the last you had heard of your brother was from the vicinity of Topeka. Didn't you so understand?

(Objected to by defendants. Objection overruled; to which ruling the defendants duly excepted.)

A. I don't remember what I understood at that time.

And, being further interrogated, testified as follows:

Q. I wish you would refer to this letter that I showed you here, in your handwriting, and refresh your recollection.

A. Well, I don't remember. I could not say that he had or had not

Q. At the time you wrote this letter it was your belief and impression that he had a few fillings in his teeth?

A. I don't know.

Q. You wrote that letter?

A. Yes; but I don't think there is anything definite in that letter one way or another. I have no knowledge of his having any filling done or of his not having any. I was merely saying that as my explanation of your previous question.

Witness is handed the letter referred to and asked:

Q. Is that your signature to that letter?

A. Yes, sir; I think it is.

Q. I wish to ask the question. You may state if, in the letter shown you, dated May 22, 1880, you did not say—

(Objected to by defendants as incompetent, irrelevant and immaterial, the letter being the best evidence. Objection overruled, and exception saved by defendants.)

Q. In that paragraph did you not say: "As regards your other questions, will say my brother, I think, had some dentistry performed on his teeth—a few fillings, perhaps. He had also a high instep and corns on his feet, though I cannot give a more positive description than the one already sent you, aside from this, as my brother and I were only a few times together in the past ten years"?

Q. The question is; did you write or say that in this letter?

(Objected to by defendants as incompetent and immaterial. The letter is the best evidence. Objection overruled, and exception saved by defendants.)

A I presume I did, if you read it correctly.

Q. Did you not also say in that letter: "He visited me for a week or so, then went to Paola, Kansas, where he remained for a short time; after that he went to Topeka, and in the spring of 1879, towards Lawrence. I received but few letters from him, as he never wrote often."

important witnesses of the defendants. It was in order to impair the weight of his testimony upon this subject that on cross-examination he was interrogated by the plaintiff's counsel as to the contents of a letter he had written. The record does not state to whom this letter was written, but it clearly shows that it was written to one of the attorneys of the plaintiff in reply to some letter of inquiry written by him. The plaintiff's counsel, having the letter in his possession, professed to repeat

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(Objected to by defendants as incompetent and immaterial evidence The letter is the best evidence. Objection overruled, and exception taken by defendants.)

A. Yes, sir.

Also as follows:

Q. I will ask you to state—look at this portion of the letter to which your attention has been called by the counsel for plaintiff, commencing there—

(Question about to be asked by plaintiff [*defendants*] is objected to as incompetent, irrelevant and immaterial. Sustained, and exception saved by defendants.)

Mr. BARKER: Then I desire to offer the portion of this letter, it beingthe same letter to which your attention has been called by the counsel for plaintiff, and in reference to which you were asked questions, commencing with the words, "You could gain nothing," and ending with the words, "over the sad affair," on page 2 of the letter; and in the same connection will offer in evidence— I will ask the witness if at the same time he did not write the following words, commencing with the words "my mother" and ending with the words "deranged over the sad affair."

(Objected to by plaintiff as hearsay, irrelevant and incompetent. Objection sustained, and exception saved by defendants.)

Here follows the portion of the letter offered in evidence:

"You would gain nothing yourself by going to Iowa, as I can and will give you all information in our possession regarding this affair; besides, your going there would be distasteful to my folks, as they are deeply mourning the dead man at Lawrence as their relative, particularly my mother, who is now almost deranged over the sad affair."

Mr. BARKER: I desire to offer in evidence the portion included in the two brackets there.

(Objected to by plaintiff as incompetent, irrelevant and hearsay. Sustained, and exception saved by defendants.)

Here follows the portion of the letter offered in evidence, as follows:

"If there is any doubt of the dead man being my brother, of course the sooner I know it the better; also for all concerned. I have no sympathy for the insurance companies you mentioned whatever, for they have no interest—at least but their own—and, of course, no thought of justice in the matter if they really believe the man in question to have been murdered as supposed."

Witness is shown picture of the cadaver and asked: From the time you first saw those pictures in St. Louis, or those similar to that, up to the present time, have you ever entertained any doubt about their being the picture of your dead brother?

A. I never had any doubt.

Q. Have you any doubt now?

A. No, sir."

certain sentences, and asked the witness if he did not say those things in the letter. The object was to show that some contents of the letter were inconsistent with his testimony and his statement of his convictions on this subject of identity.

It was not proper to pursue this method in the examination of the witness. The matter to be introduced was a part of the plaintiff's evidence, and regularly should have been kept until the turn came to put in evidence on that side. *Romertze* v. *Bank*, 49 N. Y., 579. The lawful method of procedure is well settled, and counsel should have proved the letter by the witness, and then offered in evidence the letter itself as the best evidence of any contents of the letter. This is the settled rule of procedure. 1 Greenleaf's Evidence, §§ 463, 465.

In *The Queen's Case*, in the House of Lords, 2 Brod. & Bing., 288, ABBOTT, C. J., said:

"The first part of your lordships' question is in these words: 'Whether, when a witness is cross-examined, and upon the production of a letter to the witness under cross-examination, the witness admits that he wrote that letter, the witness can be examined in the courts below, whether he did or did not, in such letter, make statements such as the counsel shall, by questions addressed to the witness, inquire are or are not made therein; or whether the letter itself must be read as the evidence, to manifest that such statements are or are not contained in the letter?' My lords, in answer to this part of your lordships' question, I am to inform your lordships, that the judges are of opinion, in the case propounded, that the counsel cannot, by questions addressed to the witness, inquire whether or no such statements are contained in the letter; but, that the letter itself must be read to manifest whether such statements are or are not contained in that letter. My lords, in delivering this opinion to your lordships, the judges do not conceive that they are presuming to offer to your lordships any new rule of evidence, now, for the first time, introduced by them; but, that they found their opinion upon what, in their judgment, is a rule of evidence as old as any part of the common law of England, namely, that the contents of a written in-

strument, if it be in existence, are to be proved by that instrument itself, and not by parol evidence."

In *Romertze* v. *Bank*, 49 N. Y., 578, the court said:

"It was not competent to repeat particular sentences, and "ask if he testified to them, because the paper was the best "evidence of what it contained."

To the same effect is

Stamper v. *Griffen*, 12 Ga., 450, and
Wills v. *State*, 74 Ala., 21.

Fifth Assignment of Error.

The court erred in refusing to allow the defendants to introduce on re-examination other portions of the letter which the plaintiff on cross-examination had proved to have been written by the witness, and portions of which had been allowed to be stated by the plaintiff. The substance of this assignment is contained in specifications 81 and 82, on page 99 of the record; and the parts specifically offered are shown on page 44, *ante*, in the foot-note.

The plaintiff, on cross-examination, had been permitted to ask the witness if he had made certain statements in a letter which he admitted that he had written, and which was in the hands of plaintiff's counsel. This was allowed against the objection that the letter was the best evidence of the statements it contained. Neither the letter itself nor the portions of it assumed to contain the statements inquired about, were offered in evidence by plaintiff. On re-direct examination the defendants offered in evidence certain other portions of the same letter, connected with the same subject. The following portion of the letter was offered:

"You would gain nothing yourself by going to Iowa, as I

can and will give you all information in our possession regarding this affair; besides, your going there would be distasteful to my folks, as they are deeply mourning the dead man at Lawrence as their relative, particularly my mother, who is now almost deranged over the sad affair."

It is held to be the rule that when one party has adduced in evidence a part of a conversation or part of a letter or correspondence, the other party has a right to show the entire conversation, letter or correspondence referred to. In *Campbell* v. *Holland*, 22 Neb., 587, where the question arose, as here, upon a re-direct examination, the court said:

"I know of no principle of the law of evidence more "firmly settled than that, when a part of a conversation is "drawn out by one party, the other party has the privilege to "draw out, from the same witness, the entire conversation."

Robeson v. *Navigation Co.*, 3 Grant's Cases, 188.
Somerville, etc., Ry. Co. v. *Doughty*, 22 N. J., L., 495.
Raymond v. *Howland*, 17 Wend., 389.
Smith v. *Prickett*, 7 Jur., N. S., 610.
Clark v. *Fletcher*, 1 Allen, 53.
Bank v. *Donaldson*, 6 Pa. St., 179.
Stevenson v. *Huy*, 43 Pa. St., 191.
Sargent v. *Home Benefit Assn.*, 35 Fed. Rep. 711.
Nelson v. *Iverson*, 24 Ala., 9.
Hudson v. *Howlett*, 32 Ala., 479.
Adkins v. *Hirshy*, 14 Ark., 442.
Walker v. *Griggs*, 28 Ga., 552.
Lester v. *Sutton*, 7 Mich., 329.
McIntire v. *Harris*, 41 Miss., 81.

The rule as it is stated in the syllabus to *Dole et al.* v. *Wool-*

dredge, 142 Mass., 161, seems nowhere disputed that "giving in evidence by one party of part of a conversation entitles the other party to introduce *so much of the rest of it as relates to the same subject*." See also *Trischet* v. *Ins. Co.*, 14 Gray, 456.

In *Grattan* v. *Ins. Co.*, 92 N. Y., 274, the court said:

"The defendant introduced the letter and read so much of it as admitted that the applicant knew that his sister died of consumption, and the plaintiff read the rest under objection and exception. We think she had the right to do so. The whole of the letter was one connected narrative and an explanation of a single definite accusation. It was written to contradict the charge of a false representation as to the cause of the sister's death. To read part of it and suppress the rest distorts its purpose and meaning and turns a justification into a confession. The plaintiff could not have read it at all. When the defendant read a part of it he was bound to take with it all that explained or qualified what preceded. The rule appears to be firmly settled, both as to a conversation or writing, that the introduction of a part renders admissible so much of the remainder as tends to explain or qualify what has been received, and that is to be deemed a qualification which rebuts and destroys the inference to be derived from, or the use to be made of the portion put in evidence. (*Rouse* v. *Whited*, 25 N. Y., 170; *Forrest* v. *Forrest*, 6 Duer, 126–7; *Gildersleeve* v. *Landon*, 73 N. Y., 609.)"

Sixth Assignment of Error.

It is assigned for error that the court erred in refusing to admit the answers of C. R. Walters and Elizabeth Rieffenach, the brother and sister of Frederick Adolph Walters, to the question: Now, you may state, if you know, how the other members of your family—your father, mother and sisters—have regarded your brother, Frederick Adolph—whether they have regarded him as being dead since they received those

photographs? The substance of the examination on this subject, found on pages 84 and 87 of the record, is given in the foot-note.*

Whether it was the body of Walters which was being fraudulently offered and attempted to be palmed off as the body of Hillmon is a direct issue under the pleadings in this case. Upon that subject of the death of Walters, the opinion and general belief in his family in 1879 is competent evidence and relevant to the issue. That belief was founded upon all they knew connected with the question: his disappearance, their knowledge of his habits of correspondence, his going to Kansas, his presence at Wichita, the letters he wrote to them from there, and their recognition of his dead body, which would inevitably be founded securely upon the peculiar significance to them of an infinitude of details hardly possible to be narrated and made the subject of direct evidence to strangers.

The objection specifically made on the record to this evidence is that it is hearsay. This court, however, and many others have laid down the broad doctrine that hearsay evidence is admissible to prove death. *Scott* v. *Ratliffe*, 5 Pet., 81; *Imboden* v. *Mining Co.*, 70 Ga., 112. But we are not required to rest upon that ground alone for the introduction of

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*C. R. Walters, a brother of Frederick Adolph, called on the part of the defendants, being upon the stand, this question was put to the witness:

"Now you may state, if you know, how the other members of the family—your father, mother and sisters—have regarded your brother Frederick Adolph whether they have regarded him as being dead since they received those photographs."

(Objected to as incompetent, irrelevant and hearsay. Objection sustained, and the defendants then and there duly excepted." Rec., 84.)

Mrs. Elizabeth Rieffenach, a sister of Frederick Adolph Waters, introduced on the part of the defendants, being upon the stand;

"The following question, among others, was put to said witness:

Q. Now you may state if you know how the other members of the family—your father, mother and sisters—have regarded your brother, Frederick Adolph, whether they have regarded him as living or dead, since they received those pictures?

(Objected to as incompetent, irrelevant and hearsay. Objection sustained; to which the defendants duly excepted." Rec., 87.)

this evidence. Common reputation and belief in the family on this subject of death is in itself competent evidence of the fact. See Buller's N. P., 294: "Hearsay is good evidence "to prove who is my grandfather, when he married, what "children he had, &c.; of which it is not reasonable to pre- "sume I have better evidence. So to prove my father, mother, "cousin, or other relation beyond the sea, dead: and the "common reputation and belief of it in the family, gives credit "to such evidence."

1 Greenleaf Ev., § 103.
Masons v. *Fuller*, 45 Vt., 32.
Ringhouse v. *Keever*, 49 Ill., 470.
Scheel v. *Eideman*, 77 Ill., 301.
Doe v. *Griffin*, 15 East, 293.
Anderson v. *Parker*, 6 Cal., 197.
Spears v. *Burton*, 31 Miss., 554.
Cochrane v. *Libby*, 18 Me., 42.

We submit that the effect of these pictures on the minds of the family is a substantive fact in itself, susceptible of proof, and relevant and competent evidence, as tending to prove not only that Walters was dead, but that the body at the inquest at Lawrence was his. It is relevant to the issue in this case, for that was the body that lay by the camp fire on the evening of March 18, 1879, and which the plaintiff has sought to make use of as the body of Hillmon.

EDWARD S. ISHAM,
Counsel for The Conn. Mut. Life Ins. Co.

145 U S 285

Supreme Court, U. S.
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FEB 25 1892
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 182.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK

vs.

SALLIE E. HILLMON.

No. 183.

THE NEW YORK LIFE INSURANCE COMPANY

vs.

SALLIE E. HILLMON.

No. 181.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, THE NEW YORK LIFE INSURANCE COMPANY, and THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT (Consolidated)

vs.

SALLIE E. HILLMON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

BRIEF OF THE MUTUAL LIFE INS. CO. OF N. Y. AND THE N. Y. LIFE INS. CO.

JULIEN T. DAVIES,
J. W. GREEN,
EDWARD LYMAN SHORT,
Of Counsel for Plaintiffs in Error.

DAVIES, SHORT & TOWNSEND,
32 NASSAU STREET,
New York City.

Supreme Court of the United States.

OCTOBER TERM, 1891.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Plaintiff in error, AGAINST SALLIE E. HILLMON, Defendant in error.	No. 182.
THE NEW YORK LIFE INSURANCE COMPANY, Plaintiff in error, AGAINST SALLIE E. HILLMON, Defendant in error.	No. 183.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, THE NEW YORK LIFE INSURANCE COMPANY and THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT (Consolidated), Plaintiffs in error, AGAINST SALLIE E. HILLMON, Defendant in error.	No. 181.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

Brief on behalf of the plaintiffs in error, The Mutual Life Insurance Company of New York, and The New York Life Insurance Company.

STATEMENT OF THE CASE.

On July 13, 1880, an action was brought by Sallie E. Hillmon against the Mutual Life Insurance Company of New York (herein called the Mutual Life), for the sum of $10,000, upon a policy upon the life of her husband, John W. Hillmon (fol. 1).

Upon the same date a similar action was brought by the same plaintiff against the New York Life Insurance Company (herein called the New York Life) upon two "Tontine Investment Policies" in the sum of $5,000 each upon the same life (fols. 181, 183), and a similar action was brought by the same plaintiff against the Connecticut Mutual Life Insurance Company of Hartford, Conn. (herein called the Connecticut Mutual) upon a policy upon the life of the said John W. Hillmon in the sum of $5,000 (fol. 338). Defenses were put in, and the three cases were, against the objections of the respective plaintiffs in error, consolidated for trial, and in June, 1882, were tried together. The jury disagreed. The cases came on again for trial in June, 1885, before Mr. Justice BREWER, were again tried together, against the objections of the plaintiffs in error, and the jury again disagreed.

At the third and final trial in March, 1888, they were again tried together, having been ordered to be "tried at one and the same time and as one cause" (fol. 55), against the objections and exceptions of the plaintiffs in error, and the Court refused to allow each of the plaintiffs in error three peremptory challenges. Verdicts, followed by judgments, were rendered against each of the plaintiffs in error, amounting in all to $37,850 (fols. 145, 312½ and 463½). The bill of exceptions and petition in error raise here the invalidity of the consolidation, the refusal to allow the peremptory challenges and various rulings upon the evidence.

The Pleadings.

In all three suits the pleadings were similar in form, varied, however, to meet the differences in the policies.

The petition (fol. 1) alleges the making by the Mutual Life of its policy on December 10th, 1878 (fol. 1). This policy was payable "to Sallie E. Hillmon, wife of John W. Hillmon, of Lawrence, Douglas Co., Kans.," upon the death of said Hillmon (fol. 6). The first and only premium paid was $121.40. The petition alleges the death of John W. Hillmon on March 17th, 1879, about three months after the policy was issued.

The answer (fol. 1) denied the allegations of the petition and set up a release executed to the Mutual Life by Sallie E. Hillmon Sept. 15, 1879 (fol. 17).

The reply alleged that the release was obtained without consideration and was inoperative and void (fol. 18). The reply also alleges that Hillmon was accidentally shot by one John H. Brown, and that the Mutual Life fraudulently procured Brown to make a statement that the body was not that of Hillmon but of another person, and obtained the release by such fraudulent representations (fol. 19).

The amended answer (fol. 21) alleged that about November 30th, 1878, the said Hillmon and Brown and one Baldwin conspired with intent to defraud the Mutual Life and procured the insurance above referred to (fol. 21).

It also alleges fraudulent representations that Hillmon was dead, and that the body produced was not that of Hillmon, and alleges that Hillmon was still alive and was keeping himself concealed. It re-alleged the execution of the release (fol. 23). The amended reply (fol. 25) sets out somewhat more fully the above matter contained in the reply.

The Mutual Life policy was issued December 10th, 1878 (fol. 29); one of the New York Life policies

($5,000) was issued November 30th, 1878 (fols. 173, 181), and the other ($5,000) was issued December 10th, 1878 (fols. 179, 192); the Connecticut Mutual policy ($5,000) was issued March 4th, 1879 (fols. 339, 342).

Statement of Facts.

The defendant in error, Sallie E. Hillmon, was the wife of John W. Hillmon. He procured the issuance of the three policies of life insurance that are the subject of controversy between these parties for her benefit. He was a man of small means, and up to the time of his marriage, some four months before the first of these policies was issued, had led a wandering life. Mrs. Hillmon sued the plaintiffs in error upon these policies to recover their amounts with interest, claiming that on the 18th day of March, 1879, her husband had been accidentally shot by his traveling companion, one John H. Brown, while in camp on Crooked Creek, in Barbour County, Arkansas.

The plaintiffs in error claimed, that so far from this being the truth, the fact was that Hillmon, his wife, the said Brown, and some relatives of Mrs. Hillmon of the name of Baldwin, had conspired together to cheat and defraud the insurance companies by taking out these policies of insurance and then falsely pretending that Hillmon was dead, and enforcing the payment of the policies. In pursuance of this conspiracy, Hillmon and Brown made a journey into Southern Kansas during the winter of 1879, and on March 18, 1879, found themselves in camp at Crooked Creek. In their company was a third man by the name of Frederick Adolph Walters. On that day Hillmon shot and killed Walters and fled, leaving Brown in charge of the body, which he palmed off as that of Hillmon's, which Mrs. Hillmon subsequently falsely identified, and has since falsely claimed to be the body of her husband. Hillmon has, since the murder, kept himself concealed.

Upon the trial, Hillmon's traveling companion, John H. Brown, who, with the exception of Hillmon himself, is the only living person capable of narrating the events connected with the murder of the man Walters, appeared as having given two accounts of the occurrences connected with the pretended death of Hillmon. By one account, Brown claimed that he had accidentally shot Hillmon when they were in camp together on the 18th of March, 1879, on Crooked Creek, and by the other account Brown narrated how Walters had been induced to accompany Hillmon, and had been murdered by Hillmon in their camp on that day.

The evidence showed that on the 18th day of March, 1879, Brown notified parties living in the neighborhood of the camp that he had accidentally shot his companion, John W. Hillmon, causing his instant death. The parties so notified went to the camp and found a dead body by the camp fire, said by Brown to be the body of Hillmon. The body was removed the next day to Medicine Lodge, the county seat of Barbour County, and after an inquest thereon, was buried in the graveyard of that place. Upon information of the occurrence being sent to Lawrence, Kansas, where the plaintiff resided, the plaintiff sent Levi Baldwin and Alva Baldwin to Medicine Lodge, and the defendants sent Theodore Wiseman and Samuel Walker. Upon the arrival of these parties at Medicine Lodge, the body was disinterred and taken to Lawrence, Kansas, and an inquest was there held, after which the corpse was buried by the plaintiff in the cemetery at Lawrence, Kansas.

The plaintiff, and some others who had known John W. Hillmon, upon the trial testified that the body was his. Many other witnesses testified that it was not his body. The family of Frederick Adolph Walters, whom the testimony showed was a young man from Madison, Iowa, moving about the country in search of work, testified that they recognized the photographs of

the dead body as those of Walters, and that they believed and mourned him to be dead. They had received letters from Walters, dated about March 5, 1879, the day Hillmon left Wichita with Brown, in which Walters stated that he was about to start with a sheep farmer named Hillmon to locate a ranch. One of the important errors on the last trial was the refusal to admit these letters. Upon the two former trials they were admitted in evidence, and the jury disagreed on each of those trials.

Upon the final trial, John H. Brown, being called for the plaintiff, adhered to the story that he had told immediately after the shooting on Crooked Creek,—that the man shot was John W. Hillmon. To contradict him, an affidavit made by him in September was read to the jury. It is found at page 61 of the record. In this affidavit Brown detailed the conspiracy that was entered into in December, 1878, for the purpose of defrauding the insurance companies. He stated that it was arranged that Hillmon and himself were to go off southwest to Wichita, Kansas, ostensibly to locate a stock ranch, but in fact to find a subject in some way that was to be passed off as the body of John W. Hillmon for the purpose ef getting the insurance money; that on their first trip out in the last days of December, they expected to find a subject that would appear to be Hillmon, frozen to death, and that could be identified only by the clothes and papers found on it, which he could pass off as Hillmon. Brown and Hillmon were entirely alone upon this first trip. They arrived at Wichita, in the latter part of February, 1879, where Brown remained until the 4th of March, while Hillmon went up to Lawrence to see his wife and get some money. On the 5th of March, Brown and Hllmon left on their second trip. They went due west to Cow skin Creek, then to Medicine Lodge by Sun City, and some miles beyond Sun City, and finally camped on

Elm Creek, about eighteen miles north of Medicine Lodge. Brown says that they overtook a stranger on this trip the first day out from Wichita whom Hillmon invited to get in and ride, and whom Hillmon proposed to hire to work for him on the ranch. That man was with them during the whole trip. Hillmon proposed to Brown that this man would do as a subject to pass off for him. Brown says that he did not agree to this and thought it was going too far to take life, but that Hillmon seemed to get more deeply determined and more and more desperate in the matter. Pains were taken not to have more than two of them seen together in the wagon. Sometimes one and then the other would be kept out of sight. On the trip to Lawrence Hillmon was vaccinated, and Hillmon vaccinated the stranger, using his pocket knife and virus from his own arm for the purpose. Hillmon changed clothes with the stranger, giving him first a change of underclothing and then the outer clothes, so that when the stranger was killed, he had on Hillman's clothes and was actually buried in a suit for which Hillmon had traded with Baldwin. The man appeared to be a stranger in the country, Brown said, a sort of an easy-go-long fellow, not suspicious or very attentive to anything. This was the man Frederick Adolph Walters, although Brown said his name was Joe Berkley or Burgis, or something like that. Brown says the next evening after they got to camp the man, Joe, was sitting by the fire. Brown was at the hind end of the wagon, either putting feed in the box for the horses or taking a sack of corn out, when he heard a gun go off. He looked around and saw the man was shot and Hillmon was pulling him away around to keep him out of the fire. Hillmon changed a day book from his own coat to that of the stranger, and said to Brown that everything was all right and in shape just as he wanted it, and that Brown need not be afraid, but it would be all right. Hillmon told Brown

to get a pony and go down to a ranch about three-quarters of a mile away and get some one to come up. Then Hillmon took the stranger's valise and started north. Brown says that he has never heard a word from Hillmon since, but at Lawrence, Mrs. Hillmon gave him to understand that she knew where Hillmon was and that he was all right. Brown further stated in his affidavit that the two inquests that were held were had over this man Joe Burgis, or Berkley, as Brown called him, who was killed by Hillmon, and that Brown believed John W. Hillmon to be still alive, and that Baldwin's wife and Mrs. Hillmon knew all about this.

The circumstances under which this affidavit of Brown was made established that it correctly stated the facts connected with the death of the man who was palmed off as John W. Hillmon. After Brown had returned to Lawrence, his family seemed to have become alarmed at the situation in which he had placed himself by engaging in this conspiracy, and they employed the Hon. W. J. Buchan as attorney to try to negotiate some arrangement by which Brown would receive immunity in the future, on condition of his telling the truth with respect to the occurrences connected with the Hillmon insurance. Mr. Buchan, after several interviews with him, received from him the affidavit above referred to. At the same time, Mrs. Hillmon, who also seems to have become alarmed at the possible consequences of her action, voluntarily surrendered the three policies of insurance which she held and gave the companies releases of all claims. These releases she subsequently claimed were obtained from her by fraud and misrepresentation, and the jury, by their verdict, found in her favor for the full amount of the policies claimed, disregarding and annulling the releases.

The issue between the parties upon the trial was whether John W. Hillmon or Frederick Adolph

Walters was shot on Crooked Creek, on the night of March 18th, 1879. The evidence, apart from the conflicting statements of John H. Brown, as to what actually did occur in this camp on March 18, 1879, was almost entirely confined to questions connected with the identification of the body which was claimed by the widow, Mrs. Hillmon, as that of her husband.

The questions presented here for review by this Court are of two classes: First, those connected with the action of the trial court in consolidating these causes for trial and directing them to be tried as one cause; and, second, those connected with the exceptions of the plaintiffs in error to the admission or rejection of evidence bearing upon the identification of the body of the man killed on Crooked Creek on the night of March 18, 1879.

Specifications of Error Relied On.

Specification A.

The Court erred in consolidating the three causes for trial (see fols. 29, 34, 55, 143).

See also as to New York Life, fols. 244, 91, and as to Connecticut Mutual, fols. 394, 91.

See also statement under Point First, below.

Specification B.

The Court erred in denying to each of the plaintiffs in error three peremptory challenges (see fols. 56, 261 and 410 for direction and refusal and exceptions.)

Specification C.

The Court erred in its rulings on the evidence in the following specified particulars:

(1.)

The Court erred in admitting the evidence of the witness, Dr. Simmons, produced on behalf of the defendant in error, to the following questions.

(Assignment of error Nos. 14 to 20 inclusive, fols. 150–152; Bill of Exceptions, fol. 107.)

The defendant in error produced a witness, Dr. N. Simmons, who testified he was a physician, and had resided in Lawrence, Kansas, since the year 1868, and that he became acquainted with John W. Hillmon in 1872, and that he saw John W. Hillmon occasionally from 1872 to 1878, and that in 1872 Hillmon had received a wound on his nose, and Hillmon had come to him for treatment, *and that he had never noticed whether the injury had left any visible scar.* The following proceedings then took place:

"Picture marked Exhibit C shown witness and witness asked: 'Do you recognize that photograph as the picture of any party you have ever known?'

> "Objected to by the defendants because it is incompetent, irrelevant and immaterial. It is not shown that the picture is an original picture. It is not shown that the negative from which it was taken is the same as produced by the camera without having been retouched or altered. It is incompetent to prove a photograph in that way. The authorities are that the artist who took the picture must be produced and show that he took the picture, and that it is a correct representation of the original of which it claims to be a picture.
>
> "Objection overruled, and exception saved by each of the defendants. (Bill of Exceptions, fol. 107). (Assignment of Error, No. 14, fol. 150).

"A. Yes, sir.

"Q. Of whom is that a picture?

"Same objection. Overruled, and exception saved by each of the defendants. (Bill of Exceptions, fol. 107). (Assignment of Errors, No. 15, fol. 151).

"A. I think it is a picture of John W. Hillmon.

"Photograph marked 'Exhibit H' is shown witness, and witness asked: Is that photograph last shown you a picture of any one you have ever known?

"Same objection. Overruled, and exception saved by each of defendants. (Bill of Exceptions, fol. 107.) (Assignment of Errors, No. 16, fol. 151.)

"A. Yes, sir.

"Q. Of whom is that a picture?

"Same objection. Overruled, and exception saved by each of the defendants. (Bill of Exceptions, fol. 107.) (Assignment of Errors, No. 17, fol. 151.)

"A. I think it is a better picture than the other of John W. Hillmon.

"Two photographs endorsed on the back, 'O.P.S., March 2, 1888,' shown witness, and witness asked: Have you ever seen those photographs before?

"A. Yes, sir. * * * * *

"Q. Are you able, from an observation of the picture in your hands, the front view of the dead man, to locate the point of injury to the nose which you were called upon to treat?

Objected to as incompetent. Overruled, and exceptions saved by defendants. (Bill of Excep-

tions, fol. 108.) (Assignment of Errors, No. 18, fol. 151.)

"A. I think so.

"Q. Is there any mark on the nose of the picturereferred to which indicates the place of that injury?

"Objected to as incompetent, irrelevant and immaterial. Overruled, and exception saved by defendants. Witness may state where the injury was on Hillmon's nose, and the photograph is the best evidence as to where the defect is located. (Bill of Exceptions, fol 108). (Assignment of Errors, No. 19, fol. 151).

"A. I see a defect on the nose that would indicate that there was an injury or deformity of some kind.

"Q. State whether that defect is located on the nose in the place compared with the place where the injury on Hillmon's nose occurred?

"Same objection. Overruled, and exception saved by defendants. (Bill of Exceptions, fol. 109.) (Assignment of Errors, No. 20, fol. 151).

"A. Yes, sir; it is about the same point, I think, as near as could be located.

* * * * * * * *

RE-DIRECT EXAMINATION: Questions by MR. HUTCHINGS, counsel for defendant in error:

(Objections and exceptions are here omitted; they are not relied on).

"Pictures of the corpse shown witness and witness asked: What is your best judgment? What are these pictures of? Doctor, state to the jury what they are?

"A. They seem to be the pictures of a corpse that is considerably decayed and so disfigured by decay——

"Q. You stated that you might not say positively as to whether they were the pictures of any one that you

ever knew. What is your best judgment in regard to the matter?

"A. I should not like to say they were a picture of anybody that I know.

"Q. I do not ask you to say that. I ask, what is your best judgment, what is your best opinion, in regard to the matter?

> "Same objection. Overruled, and exception saved. (Bill of Exceptions, fol. 110) (Assignment of Errors, No. 23, fol. 152).

"A. They may be the picture of Mr. Hillmon, or they may not be. I could not say.

"Q. Why are you not able to say, or to express an opinion as to whose pictures those photographs are?

"A. Simply because of the change in the natural appearance. There is no expression there that I can identify. The eyes are obliterated. That is why I cannot recognize them. The change is too extensive for my meagre knowledge of him. If I had been much more intimately acquainted with him I might have done better in that line probably."

(2.)

The Court erred in admitting the evidence of the witness, John Eldridge, produced on behalf of the defendant in error to the following questions:

> (Assignment of Errors, Nos. 34 to 38 inclusive, fol. 154.) (Bill of Exceptions, fol. 117).

The defendant in error produced as a witness one John Eldridge, who, after having testified that he lived in Lawrence, Kansas, that he was acquainted with John W. Hillmon in his lifetime, that he had been acquainted with John W. Hillmon for a year or so prior to his death, and that in October Hillmon was buying hogs at his stable, the following questions were asked:

"Q. State what you saw with regard to the money he had?

"Objected to by defendants as incompetent, irrelevant and immaterial. Overruled and exception saved by defendants. (Bill of Exceptions, fol. 118). (Assignment of Errors, No. 34, fol. 154).

"A. I could not say how much. He had it in three or four packages, wrapped up in newspaper; I could not say how much there was.

"Q. Did you notice the denomination of the bills?

"Same objection. Overruled, and exception saved by defendants. (Bill of Exceptions, fol. 118). (Assignment of Errors, No. 35, fol. 154).

"A. I saw tens and I saw one or two fifties.

"Q. How large a package was it that he had?

"Same objection. Overruled and exception saved by defendants. (Bill of Exceptions, fol. 118.) (Assignment of Errors, No. 36, fol. 154.)

"A. Well, I could not say as I remember right. I think there was three packages, and out of one of the packages he took a ten-dollar bill and he gave it to me —he owed me eight dollars for livery hire—and I gave him his change back.

"Q. State how thick the packages were?

"Same objection. Overruled and exception saved by defendants. (Bill of Exceptions, fol. 118.) (Assignment of Errors, No. 37, fol. 154.)

"A. Well, I couldn't tell. I remember there were three packages; they were probably—I should think they were an inch thick, I should judge.

"Q. Each one of them of that thickness, you should judge?

"Same objection. Overruled, and exception

saved by defendants. (Bill of exceptions, fol. 118.) (Assignment of errors, No. 38, fol. 154.)

"A. Yes, sir."

(3.)

The Court erred in admitting the evidence of the defendant in error, Sallie E. Hillmon.

(Assignment of Errors, Nos. 39 to 46 inclusive, fols. 154, 155. Bill of Exceptions, No. 39, fol. 154.)

The defendant in error testified in her own behalf, (it having been first shown that one A. L. Selig was the agent of the Connecticut Mutual Life Insurance Company, to whom the policy sued on in the Connecticut Mutual case was sent for delivery), that she was acquainted with Selig, who resided in Lawrence, and that she went to Selig's office between the 10th and 15th of March, 1878, and that she then had a conversation with him in regard to the policy of insurance which was then in Mr. Selig's hands, whereupon she was asked the following questions :

"Q. Now, then, what was said between you and Mr. Selig in relation to the policy ?

"Objected to on the ground that it is incompetent, irrelevant and immaterial. Objection overruled and exception saved by defendants. (Bill of Exceptions, fol. 120. Assignment of Errors, No. 39, fol. 154).

"A. I think it was the Connecticut Mutual.
"Q. From whom did you receive that policy ?
"A. Mr. Selig.
"Q. At that time ?
"A. Yes, sir.

"Defendants object to the last two questions as incompetent, irrelevant and immaterial. Over-

ruled, and exception saved by defendants. (Bill of Exceptions, fol. 120. Assignments of Error, No. 40, fol. 154.)

"Q. What was said between you and Mr. Selig in relation to the policy at the time you obtained it?

"Objected to by defendants on the ground that it calls for a conversation between them, and because it is incompetent, irrelevant and immaterial. Overruled, and exception saved by defendants. (Bill of Exceptions, fol. 120. Assignments of Error, No. 41, fol. 154.)

"*Defendants also save special exception in behalf of the companies for which there is no claim that he was the agent, and on behalf of all the companies.*

"A. I went to his office and he told me that the policy had come, and he offered it to me. I told him no, that my husband had written me.

"Q. Have you got that letter?

"A. I think so.

"Q. Go on and state what you told him.

"Objected to on the same grounds as contained in objection last above. Objection overruled, and exception saved by defendants. (Bill of Exceptions, fol. 120. Assignments of Error, No. 42, fol. 154.)

"A. I told him my husband said I could call and get the money and not take the policies; that he would be home in a short time, and he could not carry those policies, and Mr. Selig said that I had better take the policies, because if any accident should happen him out in that wild country that I would have that much more money, and if I should cancel it it would be only a small amount at the present time, and it might be of great use by and by.

"Q. What did you reply?

Objected to on the same grounds as contained in the objection last above. Objection overruled, and exception saved by the defendants.

(Bill of Exceptions, fol. 121.) (Assignments of Error, No. 43, fol. 155.)

"A. I told him I would prefer the money, and he said, no; I had better take his advice and keep the policy.

"Q. What did he say about the premiums having been paid?

"Same objection. Overruled, and exception saved by defendants.

(Bill of Exceptions, fol. 121. Assignments of Error, No. 44, fol. 155.)

"A. He said it was all paid for.

"Q. When you asked him to return the premium did he refuse to do so?

"Objected to as incompetent, irrelevant and immaterial and hearsay. Overruled, and exception saved by defendants.

(Bill of Exceptions, fol. 121.) (Assignments of Error, No. 45, fol. 155.)

"A. Yes, sir. He insisted that I should take the policy.

"Q. What did he say?

"Objected to as incompetent and hearsay. Objection overruled, and exception saved by defendants.

(Bill of Exceptions, fol. 122. Assignments of Error, No. 46, fol. 155).

"A. He refused to give me the money, and told me to take the policy.

"Q. What did you do?

"A. I took the policy."

(4.)

The Court erred in admitting the evidence of the witness Henry S. Clark, produced on behalf of the defendant in error in answer to the following questions:

(Assignment of Errors, Nos. 47 to 52 inclusive, fols. 155-156. Bill of Exceptions, fol. 122.)

Evidence was given touching the size of the foot of John W. Hillmon, and also of the corpse, and afterward the defendant in error produced the witness Henry S. Clark, who after testifying that he saw the dead body which was brought from Medicine Lodge to Lawrence, was asked the following questions:

"Did you try on the boot that he wore—that was brought back?

"A. I tried on a rubber boot that was in a trunk that was said to be his effects.

"Q. How did that boot fit your foot?

"Objected to as incompetent, irrelevant and immaterial by defendants. Overruled and exception saved by defendants.

(Bill of Exceptions, fol. 122. Assignments of Error, No. 47, fol. 155).

"A. That boot was too long for my foot.

"Q. How much?

"Same objection. Overruled, and exception saved by defendants.

(Bill of Exceptions, fol. 122. Assignments of Error, No. 48, fol. 155.)

"A. I should think a size and a half, possibly two sizes.

"Q. What size boot or shoe do you wear?

Objected to by defendants as incompetent, irrelevant and immaterial. Objection overruled, and exception saved by defendants.

(Bill of Exceptions, fol. 122. Assignments of Error, No. 49, fol. 155.)

"A. I wear a number 7."

(5.)

The Court erred in striking out the statement of the witness Selig, produced by plaintiff in error, that Hillmon was five feet nine inches high.

(Assignments of Error, No. 55, fol. 156. Bill of Exceptions, fol. 124.)

A. L. Selig was called as a witness by the plaintiffs in error. He testified among other things that he was present in Dr. Stewart's office when John W. Hillmon was measured by Dr. Stewart, as testified to by the latter; that Hillmon stood up by the door casing, something was placed over his head and measurement taken either with a rule or tape line; that the witness did not hold the rule or tape line, but saw Dr. Stewart make the measurement; that he looked at the measure, but could not tell what the height of Hillmon was without being told by the person making the measurement; that the knowledge that he had as to the height of Hillmon was derived from what Dr. Stewart stated at the time of the measurement. *The witness then testified that Hillmon's height was five feet, nine inches, and this statement was stricken out as not being within his own knowledge (fol. 124), and plaintiffs in error duly excepted.*

(6.)

The Court erred in not allowing the witness E. B. Good, produced on behalf of the plaintiffs in error, to testify in answer to the following questions:

(Assignments of Error, Nos. 69, 70 and 71, fol. 159. Bill of Exceptions, fol. 133).

The witness E. B. Good, after having testified that he resided in Lawrence, Kansas, that he had resided there 22 years, and he remembered the fact of a dead body having been brought to Lawrence about the first of April, 1879, at the undertaker's establishment, and on which an inquest was held, and that he visited such undertaker's establishment as as juror, was asked the following questions:

"Q. You may state what her conduct was on that occasion, whether it was serious or—just state the facts in reference to the matter?

"Objected to as incompetent and immaterial.

"Objection sustained, and the defendants then and there duly excepted thereto. (Bill of Exceptions, fol. 133. Assignments of Error, No. 69, fol. 159).

"Q. I don't ask what she said. I will ask you in regard to her manner of talking with the attorneys, and the examining parties in regard to that?

"Objected to as incompetent and immaterial.

"Objection sustained; to which ruling the defendants then and there duly excepted.

(Bill of Exceptions, fol. 133. Assignments of Error, No 70, fol. 159).

"Q. State on that occasion what exhibitions of grief, if any, she made?

"Objected to as incompetent and immaterial.

"Objection sustained; to which ruling the defendants then and there duly excepted."

(Bill of Exceptions, fol. 133. Assignments of Error, No. 71, fol. 159).

(7.)

The Court erred in sustaining the objection of the defendant in error, and in not permitting the plaintiffs in error to introduce a portion of the letter of May 22, 1880.

(Assignments of Error, Nos. 80, 81, 82, fols. 161, 162. Bill of Exceptions, fol. 136).

The plaintiffs in error produced as a witness one C. R. Walters, who after having testified that he resided in Rich Hill, Missouri; that he was a brother of one Frederick Adolph Walters; that his father resided for many years at Fort Madison, Iowa, and that he last saw his brother Frederick Adolph, at Holden, Missouri, in 1878; and after he had testified that he had corresponded frequently with his brother, but that since 1879 he had received no letters from him, and that he had seen the photographs of the body at St. Louis which his father had sent to him, and that since receiving these pictures at St. Louis in 1879 he regarded his brother Frederick Adolph as dead; that he received a letter from his brother Frederick, written from Wichita, Kansas, which was the last letter he had ever received from him, and after testifying that he wrote a letter dated May 22, 1880, and after portions of the letter were read in evidence by the defendant in error, the witness was questioned as follows, by the plaintiff in error:

"Q. I will ask you to state—look at this portion of the letter to which your attention has been called by the counsel for plaintiff, commencing there——

"Question about to be asked by defendant is objected to as incompetent, irrelevant and immaterial. Sustained and exception saved by defendants.

(Bill of Exceptions, fol. 137. Assignments of Error, No. 81, fol. 161.)

"Mr. Barker: Then I desire to offer the portion of this letter, it being the same same letter to which your attention has been called by the counsel for plaintiff and in reference to which you were asked questions, commencing with the words, 'You could gain nothing,' and ending with the words 'over the affair,' on page two of the letter, and in the same connection will offer in evidence—I will ask the witness if at the same time he did not write the following words, commencing with the words 'my mother,' and ending with the words 'deranged over the sad affair.

"Objected to by plaintiff as hearsay, irrelevant and incompetent. Objection sustained and exception saved by defendants. (Bill of Exceptions, fol. 137. Assignments of Error, No. 81, fol. 161.)

Here follows the portion of the letter offered in evidence:

"'You would gain nothing yourself by going to Iowa, as I can and will give you all information in our possession regarding this affair; besides, your going there would be distasteful to my folks, as they are deeply mourning the dead man at Lawrence, as their relative, particularly my mother, who is now almost deranged over the sad affair.'

"Mr. Barker: I desire to offer in evidence that portion included in the two brackets there.

"Objected to by plaintiff as incompetent, irrelevant and hearsay. Sustained, and exception saved by defendants.

(Bill of Exceptions, fol. 138, Assignments of Error, No. 82, fol. 162.)

Here follows the portion of the letter offered in evidence, as follows:

"If there is any doubt of the dead man being my brother, of course, the sooner I know it the better; also for all concerned. I have no sympathy for the insurance companies you mention whatever, for they have no interest—at least, but their own—and, of course, no thought of justice in the matter if they really believe the man in question to have been murdered as supposed."

(8.)

The Court erred in not allowing the witness Elizabeth Rieffenach, to state the contents of a letter received by her from her brother Frederick, dated March 4th or 5th, or 3rd or 4th, 1879.

(Assignments of Error, No. 85, fol. 163. Bill of Exceptions, fol. 139.)

The plaintiffs in error produced as a witness Mrs. Elizabeth Rieffenach, who testified that she was the sister of Frederick Adolph Walters, living at Fort Madison, Iowa; that she had received a letter written from Wichita, Kansas, about the 4th or 5th day of March, 1879, by her brother Frederick Adolph; that the letter was dated at Wichita, and was in the handwriting of her brother. She had searched for the letter but could not find the same, it being lost; that she remembered and could state the contents of the letter.

Thereupon defendants' counsel asked the question:

"Q. State the contents of that letter.

"To which plaintiffs objected on the ground that the same is incompetent, irrelevant and hearsay. The objection was sustained, and the defendants duly excepted.

(Bill of Exceptions, fol. 139. Assignments of Error, No. 85, fol. 163.)

The following is the letter as stated by witness:

"WICHITA, KANSAS,
"March 4th or 5th or 3d or 4th—
I don't know—1879.

"DEAR SISTER AND ALL:

"I now in my usual style drop you a few lines to let you know that I expect to leave Wichita on or about March 5th with a certain Mr. Hillmon, a sheep-trader, for Colorado or parts unknown to me. I expect to see the country now. News are of no interest to you, as you are not acquainted here. I will close with compliments to all inquiring friends. Love to all.

"I am, truly, your brother,
"FRED. ADOLPH WALTERS."

(**9.**)

The Court erred in excluding the letter written by Frederick A. Walters to Alvina D. Kasten, offered by plaintiffs in error as part of the testimony of Alvina D. Kasten.

(Assignments of Error, No. 86, fol. 163. Bill of Exceptions, fols. 140, 141.)

The defendants introduced as a witness Alvina D. Kasten, who testified that she was twenty-one years of age, and resided in Fort Madison, Iowa; was well acquainted with Frederick Adolph Walters; that she was engaged to be married to him; that she last saw him on the 24th of March, 1878, at Fort Madison; he left there at that time, and has not returned; that she corresponded regularly with him; received a letter

about every two weeks until the 3rd day of March, 1879, which was the last time she received a letter from him; that this letter was dated at Wichita, Kansas, March 1st, 1879, and was addressed to witness at Fort Madison, Iowa, and the envelope was postmarked "Wichita, Kansas, March 2nd, 1879;" that she had never heard from or seen Frederick Adolph since that time.

Thereupon defendants introduced in evidence the envelope containing said letter, with the postmark thereon, "Wichita, Mar. 2nd;" addressed "Miss Alvina Kasten, Fort Madison, Iowa, Lee County."

Thereupon defendants offered to read in evidence the said letter written by Frederick Walters to Miss Kasten. Plaintiff objected to the reading of the same; which objection the court sustained, and the defendants at the time duly excepted. (Bill of Exceptions, fol. 140. Assignment of Errors, No. 86, fols. 163–164).

The letter so offered to be read in evidence and ruled out by the court, is as follows:

"Wichita, March 1st, 1879.

"Dearest Alvina:

"Your kind and ever welcome letter was received yesterday afternoon about an hour before I left Emporia. I will stay here until the fore part of next week, and then will leave here to see a part of the country that I never expected to see when I left home, as I am going with a man by the name of Hillmon, who intends to start a sheep ranch, and as he promised me more wages than I could make at anything else I concluded to take it, for a while at least, until I strike something better. There is so many folks in this country that have got the Leadville fever, and if I could not of got the situation that I have now, I would have went there myself; but as it is at present, I get to see the best portion of Kansas, Indian Territory, Colorado and Mexico. The route that we intend to take would cost a man to

travel, from $150 to $200, but it will not cost me a cent; besides, I get good wages. I will drop you a letter occasionally until I get settled down; when I want you to answer it (you bet, honey)—don't it? So you can see that I will not get home for a few months yet, but cannot tell how soon I will get back. I am about as anxious to see you as you are to see me, but I do not want to get back there without a cent of money, for that is what I left for (you know).

"When I get back you will see me in about the way we parted (you bet). If any one asks you what I am doing, tell them that you were not informed, for it is none of their business; and another thing, don't ask me to write long letters, for I would without being told if I could find the words when I write, as I am generally busy when I receive a letter from my (old woman) sweet little girl. But you know that without being told, so I will not waste any more paper on that subject (at present). I will have to come to a close before long or I will have to do as that other fellow—write two sheets and swindle the p'master out of three cents, and you know I don't like to do that (pet). Please give my compliments to enquiring friends and all the love that you can embrace for yourself and nobody else. I will close for this time, love, to let you hear from me soon again.

"Yours as ever,

"F. A. WALTER."

POINT FIRST.

The Court below erred in requiring the three causes to be consolidated for trial and to be tried as one cause.

When the three causes came up for the *third trial*, June 29, 1888 (fol. 55), the plaintiff in error, The

Mutual Life Insurance Company, by its attorney, G. J. Barker, moved the Court to vacate and set aside the order theretofore made at the first trial (see below) consolidating the case of this plaintiff in error for trial with the other two cases and requested a separate trial thereof (fols. 54, 91).

The plaintiff in error, the New York Life, by its separate attorney, J. W. Green (fols. 244, 91) and the plaintiff in error, the Connecticut Mutual, by its separate attorney, C. S. Gleed (fols. 394, 91), each made similar separate motions.

The ruling of the Court was as follows:

"June 29, 1888. This day the three causes above "named came up for trial in pursuance of the order "heretofore made by this Court *requiring the same to* "*be tried at one and the same time*, AND AS ONE CAUSE, "and the parties thereto appearing by counsel, there- "upon each of the said named defendants "filed its motion asking the Court to set "aside the order heretofore made requiring "the causes to be tried as one, and asking that each "case be tried separately, and the said motions being "submitted to the Court, were by the Court over- "ruled; it being ordered that in pursuance to the "order heretofore made, the causes should be tried as "one cause; to which rulings and order each of the "said defendants at the time duly excepted." (fol. 43).

The bill of exceptions filed June 28th, 1888 (fol. 143), contains the original order made at the first trial, June 14th, 1882. This order was as follows:

"It appearing to the Court that the above-entitled "actions are of like nature and relative to the same "question, and to avoid unnecessary cost and delay, "and that it is reasonable to do so, it is ordered by the "Court that said actions be and the same are hereby "*consolidated for trial;* to which ruling and decision

"of the Court the defendants then and there duly ex-
"cepted" (fol. 93, p. 58).

See also fol. 30, record of similar motion of this plaintiff in error on first trial, 1882. See also fols. 42 and 43, record of similar motion of this plaintiff in error on second trial, June 4, 1885. Separate motions were made on the second trial for each of the plaintiffs in error and separately denied. (See fols. 226, 230, New York Life; see also fols. 382, 383, Connecticut Mutual.)

The right of the Circuit Court to try separate causes of a like nature or relative to the same question at the same time and before the same jury, and to consolidate causes, rests upon the following provisions of the Revised Statutes of the United States.

"Sec. 921. When causes of a like nature, or relative
"to the same question, are pending before a court of
"the United States, or of any territory, the Court may
"make such orders and rules concerning proceedings
"therein as may be conformable to the usages of courts
"for avoiding unnecessary costs or delay in the ad-
"ministration of justice, and may consolidate said
"causes when it appears reasonable to do so."

It is shown that under this statute causes could be tried together, but not necessarily thereby consolidated. The ideas are distinct between trying causes together or consolidating them for trial by order, and directing them to be tried as one cause, and therefore virtually consolidating them.

There are under this section, speaking generally, two classes of cases in which in the Circuit Courts of the United States a trial of different causes of action has been had properly at the same time and before the same jury, when such causes were of a like nature or relative to the same question.

(*1.*) *Where one case is ordered to be tried and the other cases are ordered to abide the event of the one ordered for trial.*

This was not done, and could not have been done in the present case.

Such an order, however, in a proper case is conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice.

It was "quasi consolidation." Den v. Kimble, 4 Halst. 337.

Under the old practice at common law this was permissible in the case of what was called the "Consolidation rule," which Tidd (p. 614, 3d Am. Ed.) thus describes: "In actions upon a policy of assurance "against several underwriters, the Court of Kings "Bench, by consent of the plaintiff, will make a rule, "on the application of the defendants, which is called "the Consolidation rule, for staying the proceed-"ings in all the actions except one, upon the defend-"ant's undertaking to abide by the verdict in that "action, and to pay the amount of their several sub-"scriptions and costs, in case a verdict shall be given "therein for the plaintiff. This rule, though attempted "before without success, was introduced by Lord "Mansfield into general use, in the Court of King's "Bench, to avoid the expense and delay arising from "the trial of a multiplicity of actions upon the same "questions; and if the plaintiff will not give his "consent the courts have the power of granting im-"parlances in all the actions but one, till the plaintiff "has an opportunity of proceeding to trial in that ac-"tion. On the other hand, if the plaintiff consents "to the rule, the courts will make the defendants sub-"mit to reasonable terms, such as admitting the policy, "producing and giving copies of books and papers, and "undertaking not to file a bill in equity or bring a writ

" of error. In the Common Pleas there is no rule " of Court, but a Judge's order is obtained for consoli- " dating actions."

But where a *plaintiff* might have so shaped his procedure as to avoid unnecessary costs or delay, the District Court has denied it where *plaintiff* made the application.

In Ferret *v.* Atwater, 4 N. Y. Legal Observer, 215, U. S. Dist. Ct., Southern District of New York, NELSON, J., there was a motion by *plaintiff* in eleven suits against *the same defendant* for penalties, that demurrer in one of the causes be argued, and that proceedings in all the other cases be stayed, and that the demurrers in the other cases abide the event of the demurrer argued. The motion was denied on the ground that the plaintiff having brought the cases must take the responsibility of meeting them in the usual way. In this case the parties were the same.

(2) *Where there is an absolute consolidation of different causes of action against the same defendants.*

This was not done and could not have been done, of course, in the present case.

The courts of the United States present precedents for this course as follows:

In Wolfenden *v.* Lacey, 18 Law Reporter, 672, U. S. Dist. Ct., Northern District of Ohio (1856), it was held, upon *defendants' application*, that where a plaintiff had two or more causes of action which might be joined in one, he ought to bring one suit only, and if he commences more he may be compelled to consolidate them. This is designed to protect the defendant from an unusual accumulation of costs.

In Young *v.* Grand Trunk Railroad of Canada, 10 Bissell, 550, Eastern District of Wisconsin (1881), there were three suits by the *same plaintiff* against the *same defendant*, for causes of action *which might have been joined*. They were consolidated on defendant's motion.

In Holmes *v.* Sheridan, 1 Dillon (1870), Dist. of Kan., there were actions brought by the *same plaintiff* against the *same defendants*. The actions *might have been joined*. Both actions arose out of the same transaction. The Court instructed the jury to consider them separately, the same as if each one alone was before them.

In Davis *v.* St. Louis and San Francisco Ry. Co., 25 Fed. Rep., 786 (1885), there were actions between the same parties, and Judge BREWER stated that the courts were wont to consolidate causes if it appears that the same questions are at issue between the same parties or the same interests, and that time, labor and expense will be saved by consolidation. But in that particular case the application was denied.

In Teal *v.* Bilby, 123 U. S., 592, there were separate actions by the *same* plaintiffs against the *same* defendants. This Court said: "As the rights of the parties "depend *upon the same contract*, and as the testimony in "each case was pertinent to the other, the Court very "properly ordered their consolidation and trial together "before the same jury."

(3.) *The class of cases, to which those before the Court belong, constitutes a third class, in which a consolidation for trial of different causes of action against different defendants for the purposes of saving time has been ordered.*

It is here claimed that the Court had no power to make the order here complained of, because

(*a.*) The causes were not of a like nature or relative to the same question.

(*b.*) An order for consolidation for purposes of trial where there are *different* defendants is not conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice, and is not reasonable.

(*a.*)

The three causes at bar were not of a like nature or relative to the same question.

An examination of the record (see statement of the case for references to pleadings, etc.) shows that the three originally separate actions were each founded upon an entirely distinct cause of action against a different defendant, each cause of action having no connection with any of the others and that the terms and conditions of each policy and the time of their issue were different.

The only similarity was that the *same life* was insured in favor of the *same person*.

To apply the language of FINCH, J., in Mayer *v.* Mayer, 64 How. Pr., 230, to consolidate these cases would be simply to produce "a concurrent trial of the "actions, having neither the cause, parties, nor the "same subjects of action."

The distinctness of the causes of action was made evident when testimony of Mr. Selig with reference to the delivery to the defendant in error of the policy of the Connecticut Mutual, issued several months after those of the Mutual Life and the New York Life, was admitted against all three companies over the objection and exception of the two latter companies, Mr. Selig being the agent only of the Connecticut Mutual (fol. 120).

(*b.*)

An order of consolidation for purposes of trial where there are different defendants is not conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice.

Sec. 819 is almost precisely the same as the Act of July 22, 1813, Chap. 14, Section 3, Volume 3, United

States Statutes at Large, p. 21. The question immediately arises, therefore, as to what orders and rules concerning proceedings in the causes in question would in 1813 have been conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice, and would have been reasonable.

In 1813, when this statute was passed, the following were the usages of courts in respect to consolidations:

"If two actions are pending at one time, by the same "plaintiff against the same defendant, for causes "which may be joined, and particularly if the defend- "ant be holden to bail in both, the courts will compel "the plaintiff to consolidate the actions; and, on ac- "count of the vexation, to pay the costs of the applica- "tion."

Tidd's Practice, p. 614 (3d Am. Ed.).

But Tidd also says:

"And the courts will not consolidate actions against "*different* defendants: Thus, where it was moved that "four several declarations in trespass, against four "different defendants, might be put into one, on an "affidavit that the trespass, if any, was committed by "all jointly; the court of King's Bench said, they "never went so far as the case of different defendants, "but only where the declarations are between the same "parties."

It has been shown therefore that it was not conformable to the usages of courts in 1813 to make such order as the present. In 1828 in New Jersey the Legislature only allowed consolidation of "unnecessary" actions.

Worley *v.* Glentworth, 5 Halst., 241.

Nor is it conformable to existing usages in State courts.

While the statutes of Kansas do not control this mat-

ter, yet it is an argument against the exercise of the power that there no consolidation such as the present is allowed there.

The statute (Civil Code of Kansas, Sec. 145) only allows consolidation of cases *which might have been joined* as follows:

"When two or more actions are pending in the same "court which might have been joined, the defendant "may, on motion and notice to the adverse party, "require him to show cause why the same should not "be consolidated, and if no cause be shown, the said "several actions shall be consolidated."

See 1 Kansas, 293; 32 Kansas, 419; 26 Kansas, 164.

See also Howard v. Chamberlain, 64 Ga., 696.
See Lewis v. Daniel, 45 Ga., 124, for Statute. Code (1874) Sec. 3196.

An examination of the statutes of the several states shows that consolidation proper may be ordered only when actions are pending at the same time, between the same parties, and in the same court, and which might have been joined.

It is believed that none of these states have statutes allowing cases to be consolidated for purposes of trial merely when there are different defendants and actions could not have been originally joined. Many of these statutes are as follows:—

Alabama Code, 1886, p. 606, §2742; Arizona, Rev. Stat., 1887, § 918, (also suits by same plaintiff against several defendants, but in the latter case "which may be joined"); Arkansas Dig., 1884, § 5018, Same as Arizona; California, 3 Deering's Code, Civ. Pr., §1048; Dakota, Compiled Laws, 1887, § 5,342; Idaho, Rev. Stat, 1889, § 4926; Iowa Code, 1888, §2734; Maryland, Pub.

Gen. Laws, p. 86, Art. 50, §8, (actions which "might have been joined" and limited to motion of defendant); Minn., Statutes 1891, §4888; Mich., Howell's Stat., 1882, § 7375; Neb., Comp. Stat., 1887, p. 759, § 150 limited to deft.; Ohio, Rev. Stat., 1890 (S. & B.), p. 1483, § 5120; Texas, 1 Sayles Civ. Stat., p. 471, Art. 450. Same as Arizona; Wisconsin, S. & B., Annot. Stat., 1889, p. 1612, § 2792; Wyoming, Rev. Stat, 1887, p. 577, § 2507, (limited to defendant's motion); Oregon, Hills Laws. 1887, p. 464, § 514; Georgia L., 1889, § 3672.

In New Jersey consolidation for the purpose of trial is expressly allowed, *but only where the plaintiffs are the same and the defendants are the same.* See Stnt. Rev. 1877, p. 893, § 289. As where plaintiff brings severals uits where one might equally subserve his purpose. Nickle v. Brewer, 3 Halst. 85.

It has been shown above (1) that the Circuit Courts of the United States have ordered one case to be tried and other cases to abide the event of the one ordered for trial, and also (2) that it has consolidated different causes of action against the same defendant.

The cases in which the courts of the United States have consolidated for trial causes of action against different defendants have not only been without authority and have never been sanctioned by this Court, but are not analogous to the cases at bar.

Thus in the case of The Falls of Neuse Manufacturing Co. *v.* Georgia Home Insurance Co., 26 Fed. Rep., 1, there were actions by the same plaintiffs against eight insurance companies, upon policies issued *at the same time upon the same property and upon the same application.* There was a clause in the policy for con-

tribution, which required the causes to be transferred to the equity docket and consolidated.

In the case of Keep *v.* Railroad Co., 10 Fed. Rep., 454, there were two suits in which the plaintiffs were the same, but the defendants were different. These cases were *consolidated for the purposes of trial*, to be tried the same time before the same jury, each case to be treated as distinct, and requiring a separate verdict. But there was no objection made to so trying them.

In Andrews *v.* Spier, 4 Dillon, 470, NELSON, J., District of Minnesota (1877), there were a large number of actions brought by the same plaintiff against many defendants. The defendants applied for one trial. The Court held that if the defendants agreed that judgment might abide the event of the trial in one, it would order that the causes abide the decision in any one the plaintiff might elect to try unless "upon proper showing, additional and lately discovered evidence relative to the issues, which could not be procured and submitted in time, should be brought forward and a rehearing asked and granted for that reason."

In Wide *v.* Insurance Company of North America, U. S. Dist. Ct., District of Minnesota (June, 1871), DILLON, *J.*, 3 Chicago Legal News, 353, there were three actions on three different policies of fire insurance in three different companies. The plaintiff was the same in each case.

JUDGE DILLON, in his charge to the jury, said:

"These are actions brought by the plaintiffs against "the several insurance companies above-named to "recover on policies respectively issued by them.

"Because the questions to be tried were precisely "the same, and for other reasons, the court, before "the commencement of the trial, ordered that these "causes should be tried before the same jury, who "were, however, to try them in the same manner "precisely as if each was separately on trial."

It did not appear that there was any objection to the course taken.

POINT SECOND.

The Court below erred in the impaneling of the jury in said causes, in refusing to allow each of the plaintiffs in error three peremptory challenges of jurors, and in holding and limiting all the said plaintiffs in error to three peremptory challenges only.

For assignment of error, see fol. 148.

On the first and second trials no application was made by the defendant in any one of the three cases for three peremptory challenges. See minutes of first trial, fol. 30; minutes of second trial, fol. 44.

On the *third* trial the following proceedings took place in respect to the challenges:

"And thereupon by direction of the Court, a jury "was impaneled for the trial of said causes, the said "defendants claiming the right to challenge three "persons peremptorily for each defendant, which "claim was denied—the Court ruling that but three "peremptory challenges could be exercised by the de- "fendants as a whole; to which ruling each of the "said defendants at the time duly excepted; and "after three parties called into the jury box had "been peremptorily challenged by counsel for the "defendants, each of the said defendants asked to be "permitted to challenge one or more jurors per- "emptorily, which request was refused by the Court; "to which ruling said defendants at the time duly ex- 'cepted; and after the defendants had challenged "three parties peremptorily, there being in the box "twelve good men, to wit, * * * against whom "no challenges for cause existed, or were made by

" either plaintiffs or defendants the same were duly " sworn as the jury in said cause " (fol. 56).

The bill of exceptions filed June 28th, 1888 (fol. 142), contains the following in regard to the challenge at fol. 94 :

" Be it further remembered that in the impaneling " of the jury, the defendants each claimed the right to " challenge peremptorily three jurors on behalf of each " defendant ; thereupon the Court ruled that the cases " having been consolidated, the defendants were en- " titled to three peremptory challenges, to which rul- " ing of the Court each of the defendants then and " there duly excepted.

" Be it further remembered that when the defend- " ants were called upon to exercise their peremptory " challenges, the Mutual Life Insurance Company of " New York challenged one juror peremptorily, the " New York Life Insurance Company challenged one " juror peremptorily and the Connecticut Mutual " Life Insurance Company challenged one juror " peremptorily. Thereupon the Court held that those " challenges exhausted the right of peremptory " challenge on behalf of the defendants and each of the " said defendants claimed and desired to exercise the " right of challenging peremptorily one or more of the " said jurors in addition to the three already chal- " lenged ; which claim was refused by the Court, and " to which ruling each of the defendants at the " time duly excepted." Each plaintiff in error did not therefore have three peremptory challenges in a jury of twelve men.

(*a.*) *The right of the plaintiff in error to peremptory challenges is determined exclusively by Section 819 of the U. S. R. S.*

That section is as follows :

"Sec. 819. When the offense charged is treason or

" a capital offense, the defendant shall be entitled to " twenty and the United States to five peremtpory " challenges. On the trial of any other felony, the " defendant shall be entitled to ten and the United " States to three peremptory challenges; *and in all* " *other cases, civil and criminal, each party shall be en-* " *titled to three peremptory challenges; and in all cases* " *where there are several defendants or several plaintiffs,* " *the parties on each side shall be deemed a single party* " *for the purposes of all challenges under this section.* " All challenges, whether to the array or panel, or to " individual jurors for cause or favor, shall be tried by " the Court without the aid of the triers." (Act of June 8th, 1872).

In *Ex parte* Fiske, 113 U. S., 713, this Court says, "There are numerous Acts of Congress presenting modes of procedure in the Circuit and District Courts of the United States at variance with the laws of the States in which the courts are held. Among these are the modes of impaneling jurors, their qualifications and *the number of challenges allowed to each party.* * * * so that it may be added further in the same direction, that if Congress has legislated on this subject and prescribed a definite rule for the government of its own courts, it is to that extent exclusive of any legislature of the State in the same matter."

See also McNutt *v.* Bland, 2 How., 17;
U. S. v. Pings, 4 F. R., 715;
Dwight v. Merritt, 4 F. R., 616;
Easton v. Hodges, 7 Biss, 324;
Beardsley v. Littell, 14 Blatchf., 102;
U. S. v. Hutton, 25 Int. Rev. Rec., 57.

Prior to 1872 the practice in the U. S. Courts as to peremptory challenges conformed to the State practice.

Thus in Blanchard *v.* Brown, 1 Wall, Jr., 309; Jones *v.* Van Zandt, 2 M. L., 611 (1872), the Pennsylvania statute was applied.

Or as was said by HAMMOND, J., in U. S. *v.* Coppersmith, 22 Albany L. J, 250, U. S. Circuit, W. D., Tennessee, 1880: " Prior to legislation by Congress the

matter of peremptory challenges in the Federal Courts was in some confusion until the Supreme Court declared that they might, by rule, adopt the State practice. United States *v.* Shackelford, 18 How., 588; United States *v.* Douglass, 2 Blatchf., 207; United States *v.* Reed, id. 435, 447 and Note; United States *v.* Cottingham, id., 470; United States *v.* Tallman, 10 id., 21; United States *v.* Develin, 6 id., 71."

There was no right to peremptory challenges in *civil* cases at common law.

> Thompson & Merriam on Juries, Sec. 154.
> Sackett v. Ruder, 152 Mass., 397.

In Massachusetts, for example, it was first given as late as 1862. Unless given by statute, no such right exists.

> Brown v. Rome & D. R. R. Co., 5 Ga., 195.
> Cowen v. R. R. Co., 18 Mich., 459.
> Ry. Co. v. Howard, 20 Mich., 18.
> Davis v. R. R. Co., 60 Me., 343.
> State v. Cady, 14 Atlantic Rep., 941.

In the earliest English law, "The prisoner was al- "lowed to challenge peremptorily, *i. e.*, without show- "ing cause, any number of jurors less than thirty- "five, or three whole juries. When or why he ac- "quired *this right, it is difficult to say.*"

> Stephen's History of the Criminal Law of England, Vol. 1., p. 301.

It has been said, however, that the end sought by peremptory challenges, as well as for cause, is intelligent, fair and impartial jurors.

> U. S. v. Grosbeck, 11 Pac. Rep., 542.

The law of Kansas as to peremptory challenges does not apply because the Federal Revised Statutes has in Sec. 819 expressly provided for peremptory challenges,

so that the Federal courts in the District of Kansas have no power to regulate the subject by conforming the rules as to peremptory challenges to the laws and usages in the Kansas court on the same subject, and they have not attempted to do so.

To the same effect that Sec. 819 must control as against Wisconsin Statute, see

United States v. Daubner, 17 F. R., 797.

(*b.*) *It has been decided that the true construction of this section is that the words "in all cases" refer to treason, capital offenses, other felonies, and all other cases, civil and criminal, so that defendants jointly indicted in criminal cases, and defendants originally joined in civil cases, are entitled as a whole either to twenty or ten, or three challenges, according as the case may be treason or capital: or, other felony; or, other criminal or civil case.*

United States v. Hall, 44 Fed. Rep., 883; U. S. Circ. Ct. W. D. Georgia, 1890, SPEER, J.

The provision in Section 819 of the U. S. R. S. above quoted, that in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under that section, has no application where causes against different defendants are simply ordered to be tried together at the same time before the same jury.

This provision did not appear in the original Crimes Act where the corresponding provision was as follows, (Crimes Act 1790, Ch. 9, Sec. 30:) "That if any person "or persons be indicted of treason against the United "States, and shall stand mute or refuse to plead, "or shall challenge peremptory above the number of "thirty-five of the jury, or if any person or persons be "indicted of any other offences hereinbefore set forth

" for which the punishment is declared to be death, if " he or they shall also stand mute and will not answer " to the indictment, or challenge peremptory above " the number of twenty persons of the jury, the court " in any of the cases aforesaid shall, notwithstanding, " proceed to the trial of the person or persons so stand- " ing mute or challenging as if he or they had pleaded " not guilty, and render judgment thereon accordingly."

Laws of the United States, 1789 to 1856, Dunlop's edition.

It appeared first in 1872, in the Act of June 8th, 1872 (17 U. S. Statutes at Large, Ch. 333, p. 282) by which Section 2 of the Act of March 3rd, 1865, was amended so as to read as follows :

" SEC. 2.—That when the offence charged be treason or a capital offence, the defendant shall be entitled to twenty, and the United States to five peremptory challenges. On the trial of any other felony, the defendant shall be entitled to ten, and the United States to three peremptory challenges ; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges ; *and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purpose of all challenges under this section.* All challenges, whether to the array or panel, or to individual jurors, for cause or favor, shall be tried by the court without the aid of triers."

The Act of 1865 was as follows :

" SEC. 2.—And be it further enacted, that when the " offence shall be treason or a capital offence, the de- " fendant shall be entitled to twenty, and the United " States to five peremptory challenges. On a trial for " any other offence in which the right of peremptory " challenge now exists, the defendant shall be entitled to " ten and the United States to ten peremptory chal-

"lenges. All challenges whether to the array or "panel, or to individual jurors for cause or favor shall "be tried by the Court without aid of triers."

As before stated, there was no right to peremptory challenges in civil cases except by statute.

Prior to the act of 1872, the right of peremptory challenge was exercised in the Circuit Courts of the United States, according to the usages of the several states under section 800 of the U. S. R. S.

(1.) *The mischief to be remedied by the provision as to the number of challenges in the case of several defendants in criminal cases was the existing rule allowing each person upon a joint trial to have the full number of challenges.*

This was laid down in the leading case of the United States *v.* Marchant and Colson, 12 Wheaton, 480 where Mr. Justice STORY in construing the crimes act says:

"The crimes act of 1790, Ch. 9, provides in the "twenty-ninth section for the right of peremptory "challenge in capital cases, and this right to the extent "of the statute must in all cases be allowed the prison- "ers, whether they are tried jointly or separately. Up- "on a joint trial, each prisoner may challenge his full "number, and every juror challenged as to one is with- "drawn from the panel as to all the prisoners on the "trial, and thus, in effect, all prisoners in such a case pos- "sess the power of peremptory challenge to the aggre- "gate of the numbers to which they are respectively "entitled. This is a rule clearly laid down by Lord "Coke, Lord Hale and Sergeant Hawkins, and indeed "all the elementary writers."

(2.) *The provision as to several defendants in Sec. 819 was intended to apply to civil cases where defendants are or might have been originally joined.*

This is manifest. The language of the section refers to "a case" where there are several defendants or several plaintiffs.

(3.) *This provision cannot be extended to include defendants in cases consolidated merely for trial.*

A. *Such a case is not within the words of the statute.* The language is "and in all other cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purpose of all challenges under this section." Sec. 819. The consolidating for trial does not produce "a case where there are several defendants." The action could not have been originally brought by the defendant in error against these plaintiffs in error jointly.

B. *There is nothing in the reasons for consolidating cases for trial which requires trial as one cause and such consolidation as to bring the separate defendants within the meaning of "several defendants" in Sec. 819.*

Consolidation for trial is "simply trying cases of like nature and relative to the same question together to avoid unnecessary cost and delay."

The case against each defendant remains distinct. Separate verdicts and separate judgments are entered. Consolidation into one action is different from consolidation for trial. As Finch, J., in Mayor *v.* Mayor, 64 How Pr., 234, said: "In such a case the consolida-" tion does not consolidate; the two actions remain two "and cannot become one." See also the cases cited above under Point First where the distinct character of each case after consolidation for trial is set forth.

When the court has ordered a consolidation for purposes of the trial, such an order means only that the three cases shall be submitted to the same jury upon the same evidence. There are still three cases, with the respective parties to those cases. The Statute, (Sec. 819) provides that "each party" shall have three peremptory challenges. In each of the three cases before the court there was a separate party defendant, and each of those parties was entitled to his three challenges. The section means that in *each case* in which there are several parties, the parties on one side shall be one party for purposes of challenge. Here there were always three cases, and the defendants could not be taken together to constitute one party.

The unnecessary cost and delay avoided is in the presentation of the same evidence upon the same issue to the same court more than once.

The reasoning which has been adopted in the construction of statutes relating to criminal cases applies to this case of consolidation. Thus, in Wiggins *v.* The State, 1 Lea, 738, the Court says: "Each defendant "is on trial and must stand or fall ordinarily, as if tried "alone. It is only a natural and reasonable construc- "tion of the statute to hold that every defendant should "have the benefit of its provisions."

An examination of the civil and criminal statutes of the various States shows that in civil cases there is no authority for claiming that where cases are simply tried together the parties to the different actions so tried can be compelled to join in their challenges, or that the challenge of one is that of all.

In criminal cases the general principle which underlies all the statutory provisions is that defendants jointly indicted have the option to be tried separately, and then, of course, each has peremptory challenges to full number, but if they *consent* to be tried together, they only have the full the number jointly. Yet th is is not true

ina ll States, for in Wyoming, Arizona and Georgia, each has the full number even if tried together, and in Texas, for example, each of several defendants is entitled, not to the full number a single defendant would be, but to a less number.

See the following statutes: Wyoming Rev. Stat., 1887, p. 706, §3280; Arizona Rev. Stat., 1887, §§1617, 1630, 1631, 1632; Cal. 4 Deering's Code Crim. Pro., §§1069, 1070, 1098; Dak. Com. Laws, 1887, §§7378, 7338, 7352, 7353, 7354; Tenn, §4790–2; Texas Willson's Cr. Stat., p. 177, §§2279, 2301.

The above principle is well stated in People v. McCallan, 8 Cal., 303, where the Court, after saying that it is optional with the defendant in a joint indictment to receive a separate trial, says: "If he chooses to "waive this right, and be tried jointly with another, "his authority to control the conduct of the defence is, "of course, shared with his co-defendant."

C. *If this construction were correct then as consolidation in a proper case is in the discretion of the Court, the result would be that whether a defendant who had a right to three peremptory challenges if his case were tried separately, should lose this right, would depend upon whether the Court saw fit or not to consolidate his case for trial.*

The legislature certainly did not intend that the number of peremptory challenges in any particular case should rest in the discretion of the Court.

By consolidation the plaintiff in error would, if the effects claimed by the defendants in error should prevail, be deprived by such consolidation of its individual right to three challenges, as Mr. Justice Brewer said in State *v.* Durein, 29 Kansas, 688 (quoted more fully below), "a defendant, though jointly tried, *is not* "*thereby deprived* of his individual right to make the "full number of peremptory challenges."

If a consolidation works a manifest injury to one of the parties it is a reversible error.

Aycock *v.* Doty, 1 Texas Civil App., §222.

An analogous case is presented by the reasoning in State *v.* Stoughton, 51 Vt., 365, where the Court said: "The respondents were not entitled to separate "trials as a legal right. It was discretionary with the "Court whether to grant them separate trials or not; "and although it is allowable to require that when "respondents are tried jointly they shall join in their "challenges, to avoid the delay before alluded to, the "Court cannot compel them so to do. It is a right that "each respondent is entitled to, and which can only be "lost or waived by some voluntary act. The right per-"emptory is of the same practical importance to each "as if he were being tried separately; and by going to "trial jointly they do not waive that right. If the "State is not prepared to accord the right to each in "a joint trial, it should demand a severance, and try "them separately, unless they stipulate to unite in "their challenges. Without such stipulation the Court "cannot compel them to do so. There is nothing in "the record tending to show that any such stipulation "or agreement was entered into, and hence it was er-"ror not to allow the peremptory challenges that were "demanded."

D. Since the provision in Section 819 as to several defendants does not cover the case where there is a consolidation for trial, the matter must be governed by the provision in Section 819 applicable where there is a single defendant, which, like the statute of Kansas, allows three peremptory challenges to each defendant.

The statute governing civil cases in Kansas is as follows:

"Sec. 271. The plaintiff first, and afterward the "defendant, shall complete his challenge for cause;

" they may then, in turn, in the same order, have the " right to challenge one juror each, until each shall " have peremptorily challenged three jurors, but no " more."

General Statutes Kansas, 1889, Vol. 2, p. 1329; General Statutes Kansas, 1868, Sec. 271; Compiled Laws, Kansas, 1885, p. 638; 29 Kansas, 363.

The Statute in Kansas governing criminal cases is as follows:

" The defendant, in every indictment or information, " shall be entitled to a peremptory challenge of jurors, " in the following cases," etc.

(General Statutes, Kansas, 1889, Vol. 2, p. 1712 (5263), Sec. 198; General Statutes, Kansas, 1868, Ch. 82, Sec. 198.)

The Courts of Kansas hold that these sections give the full number of challenges to each party defendant.

Mr. Justice BREWER of this Court in State *v.* Durein, 29 Kas., 688, held that it was settled by abundant authority and was in accord with the dictates of natural justice that this right of challenge should be regarded and enforced as a personal right of the individual. He referred to the case of The State *v.* Stoughton, where it was held, that, one indicted with others, does not lose his right to statutory number of peremptory challenges by consenting to be tried with them; and said that if one consenting to a joint trial does not waive the right, *a fortiori* one who is compelled against his will to a joint trial ought not to be deprived of it.

He quoted in support of his views the following criminal cases.

State v. Stoughton, 51 Vt., 362;
Cruce v. State, 59 Ga., 83;

Smith v. State, 57 Miss., 822;
Bixbe v. State, 6 Ohio, 86;
Mahan v. State, 10 Ohio, 233;
Hill v. State, 2 Yerger, 246;
Wiggins v. State, 1 Lea, 738;

And the following civil cases:

Stroh v. Hinchman, 37 Mich., 490 (approved by him).;
Sodovsky v. McGee, 4 J. J. Marsh., 267;
Reynolds v. Rowley, 2 La. An., 890;
Stone v. Segur, 11 Allen, 568;
Blackburn v. Hays, 4 Coldw., 227.

The reasoning by which courts have construed statutes to give the right of peremptory challenge to each defendant is applicable where cases are consolidated merely for trial.

The foundation of the law upon this subject is found in Salisbury's case, Plowden, 100, quoted above. As was said in Hill *v.* State, 2 Yerger, 246, "The "practice was settled by the case cited (Salisbury's) "and never was changed." This was recognized and followed in U. S. *v.* Marchant, 12 Wheaton, 480, quoted above.

The present case is analogous to a joint indictment at common law, and not to a civil action where defendants can be and are originally joined as joint contractors or tort feasors.

In State *v.* Stoughton, 51 Vt., 362 (quoted above), the right was accorded each defendant.

In Cruce *v.* State, 59 Ga., 83, the right was accorded to each defendant, the Court saying: "When the "prisoners, though jointly indicted and tried, can be "severally convicted or acquitted, the composition of "the jury is of precisely the same practical concern to "each of them as if each was being tried severally."

In Smith *v.* State, 57 Miss., 822, the Statute read,

"the accused," and the Court held that the rule of the common law that each of defendants jointly tried is entitled to the full number of challenges was continued by the statute.

In Bixbe *v.* State, 6 Ohio, 86, the statute was "every defendant," and the right was accorded to each. (Followed in Mahan and Pettyjohn *v.* State, 10 Ohio, 232.) In Hill *v.* State, 2 Yerger, 246, the statute read, "the defendant," and the right was accorded to each. (Followed in Wiggins *v.* State, 1 Lea, 738.)

In Blackburn *v.* Hays, 4 Coldwell, 229 (quoted by Mr. Justice BREWER as above stated), the court held that the word "each party" being used, and the action being *joint*, the statute as to civil cases should be construed differently from that covering criminal cases where the right is given to the defendant, saying "In criminal cases, though the defendants are "tried jointly, yet the judgments may be widely differ-"ent. In civil actions the judgment is joint, they are "sued jointly." This is reasoning which cannot apply where parties are not sued jointly, but their cases are simply consolidated for trial. Precisely the same distinction between the construction of a civil and a criminal statute was taken by BIGELOW, C. J., in Stone *v.* Segur, 11 Allen, 568, who referring to the word "party" in the statute said: "It imports the person or persons in whom a joint legal right, interest or title is vested, or against whom a joint legal liability exists, and is properly applied to one person or to many persons, according as the subject matter of a contract or cause of action relates to or embraces a sale or a joint interest or title or liability." He instances the members of a partnership as defendants and also joint tort feasors.

So in Sodowsky *v.* McGee, 4 J. J. Marsh, 267, the statute gave "each party litigant" the right to challenge in civil cases, and the Court held that whether

that was a plurality of plaintiffs or defendants they only constituted a "party litigant" on each side, but the Court said as to criminal cases:

"And whether they pleaded jointly or severally "they all constituted but one party, and, therefore, "the whole of them had a right to only three per- "emptory challenges. In criminal cases, if several "persons be tried on a joint indictment by the same "jury, each has a separate and independent right to "his challenges, whether peremptory or for cause; "because, although the trial is joint in form, it is in "substance and effect several. The verdict must be "several. Each must be punished according to his "own guilt, and not according to that of another, and "the punishment is individual and several, not joint. "There can be no contribution, no substitution. Hence, "to avoid the inconvenience which would result from "separate challenges in the same trial, it is the prac- "tice of courts of criminal jurisdiction to order separate "trials, unless the parties jointly indicted will waive "their rights to separate challenges. But none of these "reasons apply to a joint trial in a suit for trespass, or "in any trial in which the parties are responsible "'civiliter,' and all who shall be found guilty are con- "tributory."

In State *v.* Green, 33 La An., 1408, the statute in criminal cases expressly gives the right to each defendant. See also State *v.* Waggoner, 3 So. Rep., 119.

In Bibb *v.* Reid and Hoyt, 3 Ala., N. S., 88, the suit was against the principal on a bond and his sureties, and the Court held them one party and entitled as a whole to the peremptory challenges.

In Moores & Company *v.* The Bricklayers Union, 23 Weekly Law Bulletin (Superior Ct. of Cincinnati), 48, the action was against several defendants jointly for a

conspiracy and the Court held that "each party" was all the parties on either side.

In U. S. *v.* Alexander, 17 Pac. Rep., 746 (Idaho), the suit was like Bibb *v.* Reid above, and the ruling the same.

By an Act of Congress known as the Poland Bill (Act of June 22, 1874), "each party, whether in civil "or criminal cases, shall be allowed three peremptory "challenges, except in a capital case, where the "prosecution and defense shall each be allowed fifteen "challenges." The word "party" should be construed as referring to joint parties. It has been said: "*All the defendants having waived their privilege (that of separate trial) and declared their election to be tried jointly, their defence was joint and not several, and no one of them had authority to control the conduct of the defence. Their challenges should have been joint and not several.* People *v.* McCullen, 81 Cal., 303; People *v.* Thayer, 1 Park, Cr., 595."

People v. McLoughlin, 3 Utah, 143.

If we cannot find in Sec. 819 any provision which covers the case where there is a consolidation for trial, then such case must be regarded as a *casus omissus*, and each defendant must have his three challenges, whether we look to the Act of Congress or to the Law of Kansas.

Easton v. Hodges, 7 Biss, 324.

As to the manner of allowing each plaintiff in error three separate peremptory challenges, there is no difficulty.

The manner of so doing is well stated in Cruce *v.* State, 59 Ga., 83, as follows:

"As to keeping accounts between each prisoner and "the State, while the challenging is in progress, there "is no practical difficulty. A challenge would be

" charged to that one of the prisoners by whom it was
" made, and the State, on making a challenge upon its
" part, would simply charge itself with the same in
" respect to one or the other of the prisoners, at
" its option. Thus it would be known when each
": prisoner had exhausted his legal number, and when
" the State had exhausted hers as to each of the pris-
" oners respectively. True it is that one prisoner
" might wish to accept and the other might wish to
" reject a particular juror; but challenge is rejection
" (12 Wheat., 482), and the effect of rejection is not to
" block the trial, but to try with a jury satisfactory to
" both defendants, with no other exception than that
" which might result in any instance from the
" exhaustion of challenges before a full jury was
" obtained. The risk of such a contingency would
" attend all trials alike. *But were it impossible to*
" *afford a joint trial on the terms of allowing to each*
" *prisoner his full measure of challenges, the conse-*
" *quence would be not that he should lose any of his*
" *challenges, but that he should be tried in some way in*
" *which all his challenges could be duly allowed.*
" There is, in our own State, a recent instance of a
" joint trial, in which the presiding judge held that
" the peremptory challenges on the part of the pris-
" oners might extend to one hundred (37 Ga., 82)."

In a criminal case where it was claimed that the defendants were only entitled together to the whole number of peremptory challenges the court said, " In
" what order and in what ratio are the shares to be
" parceled out? When thirteen defendants are tried
" jointly shall each be declared to have twelve-thir
" teenths of a peremptory challenge? We think the
" law accords to each prisoner a right to twelve chal-
" lenges of the peremptory sort."

State *v.* McLean, 21 La. An. 546.

In the case at bar it was a mere accident of course that there were but three cases and a single defendant in each.

POINT THIRD.

The Court erred in admitting the evidence of the witness Dr. Simmons.

See Specification C (1) above, page 10.

The objections to this evidence and to the other evidence included in the bill of exceptions was taken in proper form according to the decisions in Kansas. The objection that evidence is "incompetent, immaterial and irrelevant" is sufficient to bring the question of its admissibility before the trial court.

City of Topeka v. Sherwood, 39 Kansas, 694.

And it is to the decisions of the Supreme Court of Kansas that we must look on the following question of evidence.

Wright *v.* Taylor, 2 Dillon, 25.
Ayers *v.* Watson, 132 U. S., 405.

In determining the effect of errors this Court is governed by the following rule:

"It is well settled that a reversal will be directed "*unless it appears, beyond doubt, that the error com-*"*plained of did not and could not have prejudiced the* "*rights of the party.*"

Smiths v. Shoemaker, 17 Wallace, 630.
Deery v. Cray, 5 Wallace, 795.
Moores v. National Bank, 104 United States, 625, 630.
Gilmer v. Higley, 110 United States, 47, 50.
Vicksburg & Meridian Railroad v. O'Brien, 119 United States, 99.

The Court erred in allowing the witness, Dr. Simmons, to be asked if he recognized the pictures Exhibit C and Exhibit H, as the pictures of any one he had ever known.

Dr. Simmons was not a competent witness. The objection was taken that the witness was not competent to testify, and that no one but the photographer was competent to testify that it was a correct copy from the negative. Therefore this question is properly raised here.

Locke *v.* S. C. & P. R. R. Co., 46 Iowa, 109.

"The manner or the time of taking proceedings as "a foundation for the removal of a case by a writ of "error from one Federal Court to another is a matter "to be regulated exclusively by acts of Congress, or, "when they are silent, by methods derived from the "common law, from ancient English statutes, or from "the rules and practice of the courts of the United "States."

Chateaugay Ore & Iron Company, Pet'r, 128 U. S., 555.

And the rule is that the errors must be determined upon the facts stated in the bill of exceptions.

N. Y., Lake Erie & Western R. R. Co. v. Madison, 123 U. S., 526.

Dr. Simmons was not the person who took the photograph (Reddin v. Gates, 52 Iowa, 213); and it must be taken by a person competent and skilled in the art (People v. Buddensieck, 103 N. Y., 500)

There was no proof of the details of the process by which the photographs were taken, nor as to accuracy of the work.

"We may recognize that the photographic process "is ruled by general laws that are uniform in their "operation, and that almost without exception a like-

" ness is brought forth of the object set before the " camera. Still, somewhat for exact likeness will de- " pend upon the adjustment of the machinery, upon " the atmospheric conditions and the skill of the " manipulator."

Hynes v. McDermott, 82, N. Y. 50.

In Udderzook *v.* Commonwealth, 76 Pa. St., 340, the photograph of the deceased was proved by the photographer who took it, and also by another person who was in the same photograph with the deceased (pp. 346, 352).

The Court said: " There seems to be no reason " why a photograph proved to have been taken from " life, and to resemble the person photographed, " should not fill the same measure of evidence."

Dr. Simmons was not present when the photograph was taken, nor was he well acquainted with Hillman.

In some other cases the testimony of persons well acquainted with the person has been admitted, but it is in nearly all cases accompanied by the testimony of the photographer, or the witness who was present when the picture was taken.

In the recent case of Alberti *v.* N. Y., L. E. & W. R. R. Co., 118 N. Y., 86 HAIGHT, J., says:

" During the trial, the plaintiff's counsel offered in " evidence a photograph of the plaintiff showing the " manner in which his limbs were contracted.

" This was permitted by the Court under the objec- " tion of the defendant.

" Before it was done, however, one of the doctors " testified that the photograph was taken in his pres- " ence, and that it correctly represented the condition " of the limbs. The only materiality of this evidence " was to show the manner in which the limbs of the " plaintiff were contracted. In this regard, the testi- " mony of the physician is that it was a correct rep-

"resentation of them. This made it competent as a "map or diagram. (Archer *v.* New York, New "Haven & Hartford Railroad Co., 106 N. Y., 589, 603; Wilcox v. Wilcox, 46 Hun., 32, 38; Ruloff v. People, 45 N. Y., 213, 224; Hynes v. McDermott, 82 N. Y., 50."

Dr. Simmons only saw Hillmon *occasionally* from 1872 to 1878, and of course had not seen him for ten years at the time he testified.

In Schaible v. Washington Life Ins. Co., 9 Phila., 136, the witnesses were well acquainted with the deceased.

And in Luke v. Calhoun Co., 52 Ala., 118, "the "artist by whom it was taken proved that it was taken "about the time and at the place stated in the indorse- "ment, and that the person for whom it was taken, "and whose likeness it was, bore the surname of the "plaintiff's husband." And in Ruloff v. People, 45 N. Y., 224, evidence was given by the photographer of the manner in which the picture was taken.

It was not competent to ask if Dr. Simmons recognized it.

This was not proving its accuracy as a faithful representation of the actual appearance of Hillmon, and this is what it is introduced to prove.

People v. Buddensieck, 103 N. Y., 500.

The photograph is intended to take the place of Hillman himself. The object is to place before the jury an "exact representation" of Hillmon (Barker v. Town of Perry, 67 Iowa, 148), and that in seeing the photograph they may more readily understand and properly apply the other evidence (Reddin v. Gates, 52 Iowa, 210.)

The foundation was not laid for this by asking a witness who had only seen the person occasionally during a period of six years, and had not seen him for ten years, whether he recognized the picture.

Photographs, unless properly proved, cannot be admitted, for they are not necessarily exact reproductions. It is a question of fact whether they are or not.

"But certainly the exactness of a photographic copy "of a writing depends upon the instrument, and the "materials used. Like a letter press copy, it is a copy "and may be more or less imperfect.

"However superior to other copies, is certainly a "question of fact whether any particular photograhhic "copy is exact or not, for photopraphs do not "always produce exact facsimiles; as a general rule, "in proportion as the media of evidence are multi- "plied, the chances of error or mistake are increased."

Eborn *v.* Impelman, 47 Texas, 519.

"The fifth exception was to the admission of the "evidence of photographer and expert in handwriting, "and to the admission of photographic copies of cer- "tain genuine signatures of Van Wrinkle taken by "the witness, some of which were of the size of "the original, and others of an enlarged size and to "the admission of his explanation alleged to be forged "and to the admission of his opinion, derived from a "comparison of those copies with the originals, as to "the genuiness of the signature of Van Wrinkle, at- "tached to the certificates sued upon in this case.

"The plaintiffs objected to the offering of said "copies in evidence to be examined by the jury "and to the examination of the witness in reference "thereto as stated; but the Court permitted said pho- "tographic copies to go to the jury as evidence, and "also permitted the witness to be examined in refer- "ence thereto.

"The testimony of the photographer comes within "the same principle as that of Paine. It was offered "to establish the forgery of the certificates in contro- "versy by comparing them with copies (obtained by "photographic processes, either magnified or of the

"natural size), of certain signatures assumed or admit-
"ted to be genuine, and pointing out the differences be-
"tween the supposed and disputed signatures. As a
"general rule, in proportion as the media of evidence
"are multiplied, the chances of error or mistake are in-
"creased."

"Photographers do not always produce exact fac-
"similes of the objects delineated, and however in-
"debted we may be to that beautiful science, for much
"that is useful as well as ornamental, it is at last a
"mimetic art, which furnishes only secondary impres-
"sions of the original, that vary according to the
"lights or shadows which prevail whilst being taken."

Tome *v.* Parkersburg Branch R. R. Co., 39 Md., 90, 93.

It cannot be claimed that these photographs were properly proved elsewhere. The objection as stated implies they were not. In Haussknecht *v.* Claypore, 1 Black, 435, it was claimed that the bill of exceptions did not state the witness was material to sustain the issue, but the Court said: "We think enough is stated to imply the materiality."

Dr. Simmons had testified that he had treated Hillmon in 1872 for an injury to the nose, a wound in the centre of the nose running down across the eye about an inch and a half long on the left side (folio 106). He also testified that *he never noticed whether or not this injury left any visible scar.* The effort of the defendant in error was to get from Dr. Simmons testimony tending to identify the body of the dead man as that of John W. Hillmon, and to accomplish this object by leading the surgeon to the point of asserting that a scar upon the nose of the deceased, shown by alleged photographs of the corpse, was located at the point where Hillman's nose had been injured. Dr. Simmons was therefore shown photographs to refresh his

recollection of Hillmon and to bring before his memory Hillmon's features. It is obvious that Dr. Simons' acquaintance with Hillmon was confined to that acquired during his attendance upon him for this slight injury to his nose, and that his memory of this man was faint. (See folio 110, where Dr. Loomis speaks of his "meagre knowledge of him.") It was therefore of great importance to the defendant in error to get before the doctor's eyes some alleged representation of Hillmon which, we may assume, showed him with a scar on his nose. It was of equal importance to plaintiffs in error, that no such photographs should be used to refresh the memory of the witness, and that he should not be allowed to testify with respect to them until their correctness had been proved and their authenticity established. Yet the learned Court, over the proper objections of counsel for the plaintiffs in error, allowed Dr. Simmons to testify that he recognized these photographs as those of Hillmon, in the absence of any proof of the circumstances under which they were taken or of the soundness of the claim that they should be used by this ruling to refresh his memory or to lead him to the desired conclusion that the scar on the nose of the corpse was at the point of injury on Hillmon's nose. We are not informed whether or not the objectionable photographs represented Hillmon with or without this alleged scar. Presumably they did and that they, therefore, assisted the witness to the desired result by locating the scar on the nose of the deceased to be at the point where Hillmon's nose had been injured. The theory of the plaintiff in error was that Walters' nose had been injured when he was murdered by Hillmon and fell. (See question excluded at folio 109.) As Dr. Simmons would not recognize the pictures of the corpse as that of Hillmon, it was essential to the weight of his testimony that he should appear before the jury as having some familiarity with the features

of Hillmon, and that familiarity appeared by his incompetent testimony relative to the alleged and objectionable photographs.

The question: "Are you able from an observation "of the picture in your hand, the front view of "the dead man, to locate the point of injury to "the nose which you were called upon to "treat?" was wholly objectionable. The witness was asked to locate the point of injury to Hillman's nose, not from his memory, but by his observation of a picture of the corpse, that was not identified by him as that of Hillmon from the photograph. On the contrary the witness subsequently testified that he could not recognize the photographs of the corpse as those of Hillmon's body. This photograph was by the question assumed to be that of Hillman's body, and the witness was asked whether he could remember where Hillman's nose was injured by observing the photograph. In other words, the witness was asked whether he could refresh his memory about the point of injury to Hillmon's nose by looking at this photograph. Again, the witness was permitted to draw from his description of the place where he remembered the injury to have been, and his observation of the photograph, the conclusion that belonged to the jury to accept or reject. At folio 108, the Court properly excluded the question that called for a statement of the witness as to the corresponding location between the place of injury on Hillmon's nose and the scar on the face of the corpse. Yet at folio 109, after the memory of the witness had been improperly permitted to be refreshed or rather, his imagination stimulated, by observing a photograph which he could not say was that of Hillmon, he was permitted to usurp the province of the jury and to testify directly that the defect on the nose of the corpse corresponded with the place of the injury on Hillmon's nose.

It is also true that no proper foundation was laid for

any of Dr. Simmon's testimony, subsequent to his statement that he did not notice whether Hillmon's injury left a scar. Until it had been proved that Hillmon's nose had a scar, it was wholly incompetent to discuss the scar on the nose ofthe corpse, to introduce testimony with regard to it, or to compare the place of the scar with the place of Hillmon's injury, there being no presumption that such injury left any scar.

POINT FOURTH.

The Court erred in admitting the evidence of the witness John Eldridge, as to money in possesssion of Hillmon.

See Specification C (2) above, p. 13.

Plaintiff gave evidence (fol. 95) tending to show the pecuniary condition of Hillmon at the time of the insurance. Brown in his affidavit, introduced by the defendants for the purpose of contradicting him, stated that Baldwin was to put up the money for the insurance (fol. 98).

The question asked Eldridge was clearly irrelevant. It does not appear when Eldridge saw Hillmon at his stable, whether in October, 1878, or in the October of some other year (fol. 117).

Proof that Hillmon was seen with money is not relevant to show that Baldwin was not to put it up in this matter. Nor does the fact that he had money in his possession imply that it belonged to him.

It was not a fact in issue whether Hillmon had means or not, nor was it a fact relevant to any fact in issue.

POINT FIFTH.

The Court erred in admitting the evidence of the defendant in error, Sallie E. Hillmon.

Specification C (3), above, p. 15.

POINT SIXTH.

The Court erred in admitting the evidence of the witness Henry S. Clark, produced on behalf of the defendant in error, as to the fit of Hillmon's boots and the size of the boot Clark himself wore.

See Specification C (4) above, page 18.

Clark was asked how a rubber boot that was in a trunk that *was said to be* part of the effects of Hillmon fitted his foot.

This was incompetent because based on hearsay, there was no proof that this boot was Hillmon's; it was irrelevant because there was no connection between the length of the foot of the witness and the length of the foot of Hillmon or the corpse. The same objection applies to the further testimony on this same subject set out in the above specification.

POINT SEVENTH.

The Court erred in striking out the statement of the witness Selig produced by the plaintiff in error that Hillmon was five feet nine inches high.

See Specification C (5) above, page 19.

The only ground upon which this testimony was objected to by the plaintiff in error was that it was not within the knowledge of the witness.

Selig was the agent of the Connecticut Mutual (fol. 119). One of the main issues was whether this was one of the companies conspired against. Selig was there engaged with Dr. Stuart in the performance of their duties in relation to the taking out of insurance by Hillmon. Hillmon, Selig and Stuart were present, and all engaged in the same transaction. Dr. Stuart did the act of measuring and announced the result. The declaration was a part of the *res gestæ* and admissible for that reason. See authorities cited under Point Eleventh below.

POINT EIGHTH.

The Court erred in rejecting the testimony of the witness E. B. Good, produced on behalf of the plaintiff in error as to the conduct of Mrs. Hillmon at the time of the inquest.

See Specification C (6) above, page 19.

Upon the trial of a man for the murder of his wife by poison, prepared and given on Sunday morning, the

Court admitted evidence that the prisoner during that Sunday "looked serious, although he was habitually a lively man." The Court referred to evidence of flight as admissible, and then said :

"In this instance, then, we take the flight, a thing of "itself harmless and innocent, as evidence of conscious "guilt, a necessary consequence of the crime itself, "and the conscious guilt of which the flight was evi- "dence is proof, in its turn, of the crime. In "this instance, therefore, it is certain that the law ad- "mits evidence of the party's conduct, merely to prove "his conscious guilt, which is proof of crime. Now, "this conscious guilt is altogether internal, but the law "allows that proof of it, which consists of outward "signs. Is a flight the only outward evidence of con- "scious guilt? So far from it, any indications of it, "arising from the conduct, demeanor or expressions of "the party, are legal evidence against him. The law "can never limit the number or kind of such indica- "tions. If guilty, he had already prepared for the "destruction of his victim ; the poison, it is probable, "was already producing its effects and he was aware "of the fact. That was peculiarly the occasion for "conscious guilt to reveal some evidence of the crime. "If he were unusually serious or brooding in his mind, "or impressed with fear, these were admissible evi- "dences of the crime, upon the same that conscious "guilt may be proved by a flight."

Johnson v. State, 17 Ala., N. S., 624.
See also People v. O'Neill, 112 N. Y., 363.

Lawson, in his work on Presumptive Evidence (p. 534), instances cases where the fact that a person who was accused of the murder of another showed a great repugnance to looking at the dead body, was relevant to his guilt, and refers to R. v. Stewart, 19 Howell State Trials, 156 ; also the Trial of Bathsheba Spooner

(American Criminal Trials, by Chandler, Vol. 2, p. 13). R. v. Ogilvie, 19 How St. Tr., 1284.

One of the issues in this case was whether Mrs. Hillmon was a party to the conspiracy to defraud. Upon the issue whether the dead body was or was not that of Hillmon, the conduct of Mrs. Hillmon at the inquest was clearly relevant under the above cases. Her knowledge on this point would naturally betray itself in her demeanor.

In the case of Greenfield v. The People, 85 N. Y., 85, the subject was fully discussed by MILLER, *J.*, as follows :

" Upon the trial, evidence was adduced to show the " prisoner's conduct on the morning after the homicide, " and a number of witnesses were asked whether they saw " him shed tears, and answered that they did not. Objec- " tion was duly taken to the testimony, which was over- " ruled, and the prisoner's counsel excepted to the de- " cision. One witness swore that he did see him weep " on that day, and there was evidence showing that " upon its being said to him by one of the witnesses " that it was a sad affair which occurred at his house, " he replied, 'Yes, I had a load of oats stolen.' " Another witness testified that he appeared to be in- " different as to his wife's death. The object of the " testimony objected to evidently was to establish that " the prisoner did not manifest that degree of feeling " and sensibility which was usual on such occasions, " and that he was not especially moved or affected by " his wife's death. The acts and conduct of a party " at or about the time when he is charged to have com- " mitted a crime, are always received as evidence of a " guilty mind, and while, in weighing such evidence, " ordinary caution is required, such inferences are to " be drawn from them as experience indicates is war- " ranted. (Roscoe's Cr. Ev., 21, 22.) And the de- " meanor of a prisoner at the time of his arrest, or soon

"after the commission of the crime, or upon being "charged with the offense, is a proper subject of con- "sideration in determining the question of guilt. "Such indications, however, are by no means con- "clusive, and must depend greatly upon the mental "characteristics of the individual. Innocent persons, "appalled by the enormity of a charge of crime, "will sometimes exhibit great weakness and "terror, and those who have been crushed with the "weight of a great sorrow will manifest the greatest "composure and serenity in their grief, and meet it "without the shedding of a tear. While the mani- "festations at such a time sometimes indicate ex- "citement and great distubance of the physical sys- "tem, and do not always sanction an inference of guilt, "they are admissible evidence for the jury to pass "upon, in view of the circumstances. (Lindsay v. The "People, 63 N. Y., 143.) The conduct of a prisoner "under such a trying ordeal is to be weighed by the "jury, and it is for them to determine whether it is "contrary to the ordinary behavior of a person charged "with crime, or to be attributed to his mental charac- "teristics, or evinces guilt or innocence. Under well "established rules, the evidence objected to was com- "petent for what it was worth, and there was no error "upon the trial in its admission."

There is no doubt, therefore, but that the condition of Mrs Hillmon's mind and state of her feelings were relevant; and such being the case, the testimony offered was competent. These analogous questions have been brought up in cases of action for negligence where declarations of a party with regard to a present and existing pain or suffering, or with regard to the present condition of the body or mind may generally be shown by any person who has heard them.

Atchison, Topeka & Santa Fé R. R. Co. v. Johns, 36 Kans., 769.

POINT NINTH.

The Court erred in not receiving in evidence a portion of the letter of May 22, 1880, written by C. R. Walters, brother of Frederick Adolph Walters.

See Specification C. (7) above, page 21.

C. R. Walters, who was called by the defendants, testified that he corresponded frequently with his brother Frederick, and that since 1879 he had received no letters from him (fol. 134). He also gave testimony describing the size, build, appearance and characteristics of his brother. He also testified that he received a letter from his brother Frederick written from Wichita, Kansas, that it was the last letter he had received from him and that it was lost (fol. 135). The defendant in error on cross-examination read the portions of the letter referred to in specification C.. above (page 21) (Record fol. 136), but the Court would not permit the plaintiff in error to read the remaining portions of the letter set out in Specification C. above (page 21) (Record fol. 136). That was error.

The general rule is stated in the recent case of Storch *v.* Harvey, 45 Kansas, 39 (1890):

"The deposition of one of the defendants had been "taken in advance of the trial, and after this party had "testified at the trial, the plaintiff read a portion of the "deposition which he had given, with a view of con- "tradicting him, and inquired of him if he had so tes- "tified. The defendants then, over the objections of "the plaintiff, read additional portions of the deposi- "tion which related to the same subject, and of this "he now complains. It would be manifest injustice "to introduce a portion of the testimony of a witness "on any subject without allowing the introduction of "all that was said by the witness on that subject. The

" Court committed no error in admitting the other " answers or statements of the witness concerning the " same transaction."

The following rule was quoted with approval in Rouse *v.* Whited, 25 N. Y., 170:

" Where a statement forming part of a conversation " is given in evidence, whatever was said by the same " person in the same conversation that would in any " way qualify or explain that statement, is also ad- " missible * * * "

(Phil. on Ev., 4th Am. Ed., from 10th Eng. Ed., 416).

" The defendant introduced the letter and read so " much of it as admitted that the applicant knew that " his sister died of consumption, and the plaintiff read " the rest under objection and exception. We think " she had the right to do so. The whole of the letter " was one connected narrative and an explanation of a " single definite accusation. It was written to con- " tradict the charge of a false representation as to the " cause of the sister's death. To read part of it and " suppress the rest distorts its purpose and meaning " and turns a justification into a confession. The " plaintiff could not have read it at all. " When the defendant read a part of it he " was bound to take with it all that explained or " qualified what preceded. The rule appears to be " firmly settled both as to a conversation or writing, " that the introduction of a part renders admissible so " much of the remainder as tends to explain or qualify " what has been received, and that it is to be deemed " a qualification which rebuts and destroys the infer- " ence to be derived from or the use to be made of the " portion put in evidence. (Rouse v. Whited, 25 N.

" Y., 170 ; Forest v. Forest, 6 Duer, 126–7 ; Gilder-
" sleeve v. Landon, 73 N. Y., 609.)"

Grattan v. Metropolitan Life Ins. Co., 92 N. Y., 284.

In State *v.* Brown, 21 Kansas, 38, the prosecution introduced evidence showing a portion of a certain conversation between the defendant and a third person ; the Court said upon the question of introducing the rest : " It was simply proof of a part of the same con-
" versation, a part of which the prosecution had al-
" ready introduced evidence of, and it tended to
" rebut the unfavorable inference which the prosecu-
" tion undoubtedly desired the jury to draw from that
" portion of the conversation which the prosecution
" had already given to the jury."

When part of a correspondence is given in evidence the whole may be, upon the same principle which allows the whole of a conversation to be given in evidence under like circumstances.

Lester v. Sutton, 7 Mich., 331.

Parts of conversation, letters and replies to letters all stand on the same principle.

Livermore v. St. John, 4 Rob., 12.

Where a part of a document is read, the whole of the rest can be read if relevant to the issues.

Forrest v. Forrest, 6 Duer., 129.

See also :

Clark v. Smith, 10 Conn., 1.
Dorlon v. Douglas, 6 Barb., 451.
Walker v. Griggs, 28 Ga., 552.
Lynde v. McGregor, 13 Allen, 173.
C. M. & St. P. Ry. v. Artery, 137 U. S., 507.
Ayers v. Watson, 132 U. S., 405.

POINT TENTH.

The Court erred in not allowing witness, Elizabeth Rieffenach, to state the contents of a letter received by her from her brother, Frederick A. Walters, dated March 4th or 5th, or 3d or 4th, 1879.

See Specification C (8), above, page 23.

An oral account of the contents of this letter was proper, the witness having herself seen it, and the original having been lost and search made for it.

The letter was not hearsay, but original evidence. This letter was a declaration constituting part of the *res gestae*. See next point.

POINT ELEVENTH.

The Court erred in excluding the letter written by Frederick A. Walters to Alvina D. Kasten offered by plaintiff in error as part of the testimony of Alvina D. Kasten

See Specification C (9) above, page 24.

The letters were admissible on the same principle as declarations or writings by persons deceased are admissible. They were, under the circumstances, the best evidence obtainable as to the movements of Walters, and they should have been received for that reason, if for no other. At the time of the trial Walters had not been heard of for ten years by his family or by Miss Kasten to whom he was engaged. The weight to be attached to them was a question for the jury, but the plaintiffs in error had a right to have them considered.

If letters had been received from Walters after the alleged death of Hillmon and shortly before the trial of the action, these letters would have been competent evidence tending to prove that Walters was living. It has been held that such letters are admissible for the purpose of proving that a person was alive at a date later than that at which it was claimed he had died.

Smith v. Smith, 49 Ala., 158.
Flynn v. Coffee, 12 Allen, 133.
Keech v. Rhinehart, 10 Pa. St., 240.

These letters show that the writer was in the neighborhood of a place where a body was found, and should be received as links in a chain of evidence tending to show that it was the writer's dead body.

The letters were admissible as the declarations of a person deceased, or at least as the declarations of a person who had disappeared and had not been heard of for many years. They were written in the natural course of events in the writer's life, and as their proper outcome, and upon their face show that they were not written for the purpose of subserving the writer's personal interests. They are as legitimate evidence as memoranda in the course of business or original entries in business books, and presumption of correctness attaches to them in the same degree.

Suppose that in place of the letters the books of an employment agency were offered in evidence; that the person who kept these books and who made the entries was dead, but that the books showed that Walters entered the employment of Hillmon on or about the 17th day of March, 1879, it could not be contended that these books would be inadmissible. Anything that tends to connect Walters and Hillmon at or near the 17th day of March, 1879, is relevant to the facts in issue, and the authorities are clear beyond question that such books would be admissible.

In Best on Evidence (Chamberlayne's Ed.), p. 480,

the learned author after stating that declarations made by deceased persons against their own interest are receivable in evidence, says :

" Allied to these are declarations in the regular " course of business, office or employment, by deceased " persons, who had a personal knowledge of the facts, " and no interest in stating an untruth."

See also

1 Wharton, Evidence, § 238.

The fact that these letters were not original entries in business books does not affect their admissibility. Other writings in the ordinary course of events are admissible upon the death of the writer. These letters, however, have the same basis of admissibility as business letters so-called.

All that is necessary to bring writings within the rule is that they should be seriously written and bear upon their face the impress of sincerity, not that they should appear to be on any particular subject. The reason for the rule as to the admissibility of the impartial writings of third persons makes it impossible that any other rule should be recognized.

One reason which makes such entries admissible is irresistible ; it is *necessity*.

Bartholomew v. Farrell, 41 Conn., 109.

As this Court, in Chaffee *v.* United States, 18 Wall., 516, said (p. 541) :

" Their declarations (*i. e.*, the declarations of de- " ceased or absent persons) *verbal* or written, must " sometimes be admitted when they themselves cannot " be called in order to prevent a failure of justice."

Necessity and the prevention of a failure of justice are present in the cases now before the Court. Only by such writings as these is it possible to prove the movements of the deceased wanderer. If these letters

cannot be received, then it would be almost impossible to prove the movements of any traveller when he is in places where he is unknown.

But independently of the reason now assigned there is ample authority in the decisions of this and other courts, that writings other than original entries in business books may be received in evidence.

The admissibility of writings of third persons is not confined to original entries in books, but extends to all memoranda made in the course of business and in the natural order of events, and without motive to deceive.

Guy v. Mead, 22 N. Y., 462.
Halsey v. Linsebaugh, 15 N. Y., 485.
Russell v. Hudson Riv. R. Co., 17 N. Y., 134.

In Fennerstein's Champagne, 3 Wall., 145, it was held that, in order to show the actual market value of articles of merchandise at a particular place in a foreign country, letters by third parties abroad to other third parties—offering to sell at such rates—if written in ordinary course of the party writing them, and contemporaneously with the transaction which is the subject of the suit—are admissible in evidence, even though neither the writers nor the recipients of the letters are in any way connected with the subject of the suit.

Receipts given by a sheriff or other person duly authorized to receive money "are competent secondary "evidence, after the officer's death, within the general "principle upon which entries and memoranda of per-"sons since deceased are received."

Livingston v. Arnoux, 56 N. Y., 507, 519.

Andrews, J., remarked in this case (p. 518):

"Nor is it necessary, as the defendent claims, "that the entry should have been made in a book. No "cases have been cited which proceed upon this dis-"tinction, and there is no principle upon which it can "be supposed."

Finally, another reason exists for the reception of the letters. The movements of Hillmon, Brown and Walters up to and shortly after the 17th day of March, 1879, form the *res gestæ* in the present case. Everything that tends to connect these three parties, and that was done by any one of them, forms part of the *res gestæ*. These letters are a part of the *res gestæ*.

In Abel *v.* Fitch, 20 Conn., 96, Ellsworth, J., said:—

"Entries by persons since deceased, having full and peculiar means of knowledge, made at the time, in the regular course of business, in the usual and proper place and manner, especially if in the discharge of one's duty, are admissible to the jury as part of the *res gestæ*.

This letter was not hearsay, but original evidence.

The letter was a declaration constituting part of the *res gestae*.

It was claimed by the defence that the body found was not that of Hillmon but of Walters, and the evidence in question was a part of the acts of Walters during the time in question.

The rules in Kansas are as follows:

"Again, it may be remarked that while as a general rule the declarations of a party are not admissible in his own behalf, yet an exception to the rule exists where declarations accompany some principal fact which they serve to qualify or explain, and are thus said to be a part of the *res gestae*."

Stone *v.* Bird, 16 Kansas, 491.

"Declarations made when they accompany some act, the natnre and object or motives of which are the subject of inquiry, are receivable, because they afford the best means of ascertaining the character of such acts as admitted or explained."

Stark *v.* Cummings, 5 Kansas, 85.

In State *v.* Montgomery, 8 Kansas, 351, the Court says: "In order to make a declaration evidence upon "this ground, there must be a principal fact which it "attends, and whose character it serves to explain. "There must be concurrence in point of time between "the act and the declaration; otherwise, it is but a "narrative of what has been or an assertion of what "will be done."

"Mr. Justice FLETCHER, in giving the opinion in Lund "*v.* Inhabitants of Tyngsborough, 9 Cush., 41, dis- "cusses this question at some length and great perspi- "cuity. We quote a few sentences: 'If a declaration "has its force by itself as an abstract statement, "detached from any particular fact in question, de- "pending for its effect on the credit of the person "making it, it is not admissible in evidence. Such a "declaration would be hearsay; as, where the holder "of a check went into a bank, and when he came out "said he had demanded its payment. This declara- "tion was held inadmissible to prove a demand, as be- "ing no part of the *res gestæ*. This statement was "merely narrative, wholly detached from the act of de- "manding payment, which was the fact to be proved.' "Chief Justice HOSMER, in Enos *v.* Tuttle, 3 Conn., "250, says that declarations to become part of the "*res gestæ* 'must have been made at the time of the "act done which they are supposed to characterize, "and have been well calculated to unfold the nature "and quality of the facts they are intended to ex- "plain, and so to harmonize with them as obviously to "constitute one transaction.' See also 1 Greenl. Ev., "Sec. 108; Com. *v.* Harwood, 4 Gray, 41; Nutting *v.* "Page, Id., 584; Farner *v.* Turner, 1 Iowa, 53; El- "kins *v.* Hamilton, 20 Vt., 627; Noyes *v.* Ward, 19 "Conn., 250."

"Anything said accompanying the performance of "an act, explanatory thereof or showing its purpose

" or intention, when material, is competent as a part " of the act."

People v. Davis, 56 N. Y., 102.

The letter accompanied the act, and was so connected therewith as to constitute a part of it.

The letter formed part of the transaction involved in the litigation, and is to be deemed a written act and part of the *res gestae*.

Tuthill Spring Co. v. Shaver Wagon Co., 35 F. R., 644.

The letter was not simply the narrative of a past occurrence.

Vicksburg, etc., R. R. Co. v. O'Brien, 119 U. S., 105;
Insurance Company v. Mosley, 8 Wall., 397;
Roach v. Learned, 37 Maine, 110;
Friedenstein v. U. S., 125 U. S., 224.

" But when the act of a party may be given in " evidence, his declarations, made at the time, and " calculated to elucidate and explain the character and " quality of the act, and so connected with it as to " constitute one transaction, and so as to derive credit " from the act itself, are admissible in evidence. The " credit which the act or fact gives to the accompanying " declarations, as a part of the transaction, and the " tendency of the contemporary declarations, as a part " of the transaction, to explain the particular fact, " distinguish this class of declarations from mere hear- " say. Perhaps the most common and largest class of " cases in which declarations are admissible, is that in " which the state of mind or motive with which any " particular act is done is the subject of inquiry. Thus, " where the question is as to the motives of a debtor in " leaving his house and going and remaining abroad, " so as to determine whether or not an act of bank-

" ruptcy has been committed, his declarations when " leaving his house and while remaining abroad, as to " his motives for leaving his house and for remaining " abroad, are admissible in evidence. Such declarations " accompanying the act, clearly belong to the *res gestæ*. " They are calculated to elucidate and explain the act, " and they derive a degree of credit from the act."

Lund v. Inhabitants of Tyngsborough, 9 Cush., 36.

The *res gestæ* in this matter is the alleged death of John W. Hillmon, and all that was said or done by the actors contemporary with it, and which tend to elucidate its character, are parts thereof, and as such may be proved on the trial by either party.

Felt *v.* Amidon, 43 Wis., 467.

See also :

Furman & Co.'s Case, 5 Ct. Claims, 579.

POINT TWELFTH.

The judgment of the Circuit Court should be reversed and the cause remanded with directions to take further proceedings in accordance with the above, and a venire facias de novo awarded.

JULIEN T. DAVIES,
J. W. GREEN,
EDWARD LYMAN SHORT,
Of Counsel.

Office Supreme Court
FILED
FEB 24 1892
JAMES H. McKENNEY
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, THE NEW YORK LIFE INSURANCE COMPANY, AND THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, *Plaintiffs in Error.*
vs.
SALLIE E. HILLMON, *Defendant in Error.* } No. 181.

THE MUTUAL LIFE INSURANCE COMPANY, OF NEW YORK, *Plaintiff in Error.*
vs.
SALLIE E. HILLMON, *Defendant in Error.* } No. 182.

THE NEW YORK LIFE INSURANCE COMPANY, *Plaintiff in Error.*
vs.
SALLIE E. HILLMON, *Defendant in Error.* } No. 183.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, *Plaintiff in Error.*
vs.
SALLIE E HILLMON, *Defendant in Error.* } No. 184.

BRIEF FOR DEFENDANT IN ERROR.

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THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,	*Plaintiff in Error.*	No. 184.
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SALLIE E HILLMON,	*Defendant in Error.*	

BRIEF FOR DEFENDANT IN ERROR.

The pages referred to in this brief are the pages of the printed record as numbered at the top of the pages, except where otherwise herein indicated.

On the 6th of August, 1888, Sallie E. Hillmon in the United States Circuit Court for Kansas, recovered judgment against The Mutual Life Insurance Company of New York, for fifteen thousand and sixty dollars ($15,060.00) with interest thereon from the 21st of March, 1888, and costs of suit (page 90) in an action by her commenced against that Company on the 13th day of July, 1880,

(pages 1 to 6) on its ten thousand dollar ($10,000.00) policy dated the 10th of December, 1878, in her favor on the life of her husband, John W. Hillmon, (pages 3 to 5).

Her cause of action is stated in her petition in usual form on life policies as shown on pages 1 to 3 in which it is alleged that her husband, John W. Hillmon, died on the 17th of March, 1879.

That Insurance Company filed an amended answer to that petition on the 7th of June, 1881, (pages 12, 13), and in addition to a general denial that defendant therein alleged to the effect:

That John W. Hillmon, John H. Brown and Levi Baldwin and divers other persons to the company unknown procured that and the other insurance mentioned in this brief in pursuance of a conspiracy between them;

And that said John W. Hillmon was not dead;

And that a certain dead body was fraudulently represented to be the dead body of said John W. Hillmon;

And that defendant in error had released that company from any cause of action on that policy.

The reply of Sallie E. Hillmon to that amended answer was filed on the 2d of January, 1882, (pages 14, 15 and 16).

In that reply in addition to denying the allegations in that amended answer she set up matter showing among other things that that release was fraudulently obtained and was without consideration.

On the 6th of August, 1888, Sallie E. Hillmon, in the United States Circuit Court for Kansas, recovered judgment against The New York Life Insurance Company for fifteen thousand and sixty dollars ($15,060.00) with interest thereon from the 21st of March, 1888, and costs of suit (pages 192, 193), in an action by her commenced against that company on the 13th day of July, 1880, (pages 106 to 118) on its two policies each for five thousand dollars ($5,000.00) one dated of the 30th day of November, 1878, and the other of the 10th day of December, 1878, both in her favor on the life of her husband, John W. Hillmon, (pages 110 to 117).

Her causes of action are stated in her petition in usual form on life policies as shown on pages 106 to 110 in which it is alleged among other things that her husband died on the 17th of March, 1879.

That Insurance Company filed an amended answer to that petition on the 5th day of June, 1885 (pages 138 to 140), and in addition to a general denial that defendant therein alleged to the effect:

That John W. Hillmon, John H. Brown and Levi Baldwin and divers other persons to the company unknown procured that and the other insurance mentioned in this brief in pursuance of a conspiracy between them.

And that said John W. Hillmon was not dead.

And that a certain dead body was fraudulently represented to be the dead body of said John W. Hillmon.

And that defendant in error had released that company from any cause of action on those policies.

The reply of Sallie E. Hillmon to that amended answer was filed on the 6th day of June, 1885 (pages 141, 142 and 143).

In that reply, in addition to denying the allegations in that amended answer, she set up matter showing among other things that that release was fraudulently obtained and was without consideration.

On the 6th day of August, 1888, Sallie E. Hillmon, in the United States Circuit Court for Kansas, recovered judgment against The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, for seven thousand five hundred and thirty dollars ($7,530.00) with interest thereon from the 21st of March, 1888, and costs of suit (page 286) in an action by her commenced against that company on the 13th day of July, 1880, (pages 207 to 212) on its five thousand dollar ($5000.00) policy dated of the 4th of March, 1879, in her favor on the life of her husband, John W. Hillmon, (pages 209 to 212).

Her cause of action is stated in her petition in usual form on life policies, as shown on pages 207 and 208, in which it is alleged among other things that her husband died on the 17th of March, 1879.

That insurance company filed an amended answer to that petition on the 7th of June, 1881, (pages 219, 220 and 221,) and in addition to a general denial that defendant therein alleged to the effect:

That John W. Hillmon, John H. Brown and Levi Baldwin and divers other persons to the company unknown, procured that and

the other insurance mentioned in this brief in pursuance of a conspiracy between them.

And that said John W. Hillmon was not dead.

And that a certain dead body was fraudulently represented to be the dead body of said John W. Hillmon.

And that defendant in error had released that company from any cause of action on that policy.

The reply of Sallie E. Hillmon to that amended answer was filed on the 2d of January, 1882, (pages 222, 223).

In that reply, in addition to denying the allegations in that amended answer, she set up matter showing among other things that that release was fraudulently obtained, and was without consideration.

On the 14th of June, 1882, it appearing to that Circuit Court that those three actions were of like nature and relative to the same question, and to avoid unnecessary costs and delay, and that it was reasonable to do so, that Circuit Court consolidated those three actions for trial, as it was proper for it to do under section 921, page 175 R. S. 1878, (pages 17, 128, 225).

The first trial of those three cases, as thus consolidated, commenced on the 14th of June, 1882, and continued to the 1st of July, when the jury retired to consider of their verdict, but not agreeing, they were then discharged without verdict (pages 17 to 23, 127 to 133, 225 to 230).

The second trial commenced on the 5th of June, 1885, and continued to the 24th of that month, when the jury retired to consider of their verdict, and not agreeing, they were discharged on the next day without verdict (pages 27 to 34, 140 to 149, 235 to 242).

The third trial commenced on the 29th of February, 1888, and continued until the 21st day of March, 1888, on which day the jury, after having retired for deliberation, returned into court with their verdict in each of said three cases (pages 35 to 55, 150 to 157, 243 to 251).

Each of the verdicts was for the amount of the policies sued on against each insurance company, respectively, with interest thereon from the time the same should have been paid, at six per cent. per annum to the 21st of March, 1888, the day on which the verdicts were rendered.

And on the next day, 22d of March, 1888, defendant in error

moved the Court for judgment on the several verdicts, but the Court postponed that matter at the request of the Insurance Companies, and gave them time for preparing bill of exceptions, etc., as shown by the journal entry of that date (pages 55, 56, 158, 159, 251, 252).

And of course it was proper for each judgment when rendered on the 6th of August, 1888, to bear interest from the time the verdict was rendered, the postponement having been at the instance of the Insurance Companies.

There is not any mention made in the bill of exceptions of any instructions to the jury—therefore, of course, the presumption is that the jury were properly instructed by the Court.

On pages 43 to 54 we find matter which, if set forth in a bill of exceptions as instructions given at the last trial, would, we submit, appear appropriate, and show full and sufficient reasons for the introduction of any of the testimony objected to by plaintiffs in error—but as the same is not in any bill of exceptions, we suppose the same is not properly in the record.

Hanna vs. Mass., 122 U. S. 26, and cases there cited.

Three copies of a bill of exceptions taken in the consolidated case are set forth at pages 56 to 89, 159 to 191 and 252 to 285.

And those three insurance companies filed a joint petition in error, of which three copies are set forth in the record (pages 90 to 101, 193 to 204 and 287 to 298), which joint petition in error, we suppose they claim contains the required assignments of error to bring their case within the rules of this Court in relation to assignments of error;

And they also sued out a joint writ of error (pages 103, 104) and procured and served a joint citation (page 104).

Each of the three insurance companies also sued out a separate writ of error, procured a separate citation and service, and gave separate bond.

For those of the Mutual Life Insurance Company of New York, see: Bond, pages 101, 102; writ of error, pages 102, 103; citation and service, page 105.

For those of the New York Life Insurance Company: Bond, pages 204–5; writ of error, page 205; citation and service, page 206.

For those of The Connecticut Mutual Life Insurance Company: Bond, page 298; writ of error, page 299; citation and service, pages 299 and 300.

Plaintiffs in error in their said petition in error claim that the Circuit Court erred 88 times, that is, they assign 88 errors. As those petitions in error are duplicates, we will in referring to the number of assignments of error refer to the first copy thereof in said printed record, that is, to the copy thereof at pages 90 to 101 and as the copies of bill of exceptions are duplicates we will refer to the first copy thereof in said printed record, to-wit: to the one at pages 56 to 89.

The bill of exceptions does not contain all of the evidence.

On pages 59, 60 there is a statement in the words following:

"Be it further remembered that thereupon the plaintiff to sus-
"tain the issues in her behalf, introduced in evidence the several
"policies of insurance upon the life of John W. Hillmon issued by
"the defendant companies and declared upon by plaintiff in the
"several actions on trial; also evidence tending to show that for-
"mal proofs of death had been furnished these companies, as re-
"quired by the terms of said policies; also evidence tending to
"show that the said John W. Hillmon in March, 1879, was travel-
"ing through southern Kansas, in company with one John H.
"Brown, in search of a location for a cattle ranch; that on the
"18th day of March, 1879, the said parties were in camp on Crooked
"Creek, in Barbour County, Kansas; that on the evening of said
"day said Brown notified parties living in the neighborhood of
"the camp that he had accidently shot his companion, John W.
"Hillmon, causing his instant death; that the parties so notified
"went to the camp and found a dead body by the camp-fire,
"said by Brown to be the body of Hillmon; that said body was
"removed the next day to Medicine Lodge, the county seat of
"Barbour County, and, after an inquest thereon, was buried in the
"grave-yard at that place; that, upon information of said occur-
"rence being sent to Lawrence, Kansas, where plaintiff resided,
"as well as the agents of the defendant companies, the plaintiff
"sent Levi Baldwin and Alva Baldwin to Medicine Lodge, and
"the defendants sent Theo. Wiseman and Samuel Walker; that
"upon the arrival of these parties at Medicine Lodge the body
"was disinterred and taken to Lawrence, Kansas; that an inquest
"was there held on the body, after which the same was buried by
"the plaintiff in the cemetery at Lawrence, Kansas; that plain-
"tiff and others who knew John W. Hillmon, testified that said
"body so brought to Lawrence was the body of said John W.

"Hillmon; also evidence tending to identify the said body as being "that of John W. Hillmon; also evidence tending to show the "pecuniary condition and ability of said Hillmon at the time he "took out the insurance upon his life; also evidence tending to show "when, how, and under what circumstances the releases signed by "plaintiff were given, and that same were without consideration.

"Be it further remembered that, touching the affidavit made by "John H. Brown and introduced as evidence for the purpose of "contradicting him, a large amount of evidence was introduced "by both parties tending to show the circumstances leading up to "the making of said affidavit, the defendants claiming that the "affidavit had been voluntarily signed & sworn to by Brown, "and the plaintiff claiming that Brown had been induced to make "it by the representations of Buchan made directly to him & "also through his brother, the said Buchan himself testifying that "he had demanded & received compensation from the defendants "for the procuring said affidavit, and also the execution of the "written releases signed by plaintiff; and thereupon the plaintiff, "to further sustain the issues upon her part, read in evidence from "the deposition of John H. Brown as follows:"

There are also other statements in the bill of exceptions hereinafter referred to in relation to particular assignments of error—all which should be considered in connection with the above.

Which statements and the above mentioned pleadings—those on the part of the Insurance Companies claiming to the effect that John W. Hillmon was not dead, and that a corpse other than his was claimed to be his, and that defendant in error had released her causes of action—those on the part of the defendant in error in addition to describing her causes of action to the effect that those releases were fraudulently obtained and were without consideration, are here referred to and requested to be borne in mind in connection with such of said assignments of error as relate to the admission and exclusion of evidence, and we refer to the pleadings above mentioned as part hereof, the same as though herein set forth, for a description of the issues in the case.

In reference to those assignments of error we submit the following:

As to first and second assignments of error—

The three actions were consolidated for trial under section 921 page 175 R. S., 1878, and the cases being of a like nature and rel-

ative to the same question we suppose it to be clear that the Court had authority to so do. That it was reasonable so to do is evident from the length of time it took to try the cases.

See printed record pages 17 to 23, 27 to 34 and 35 to 54; the times of trial being: 1st trial, from June 14 to July 1, 1882; 2d trial, from June 5th to 24th June 1885; and 3d trial, from 29th February to the 21st of March, 1888—as well as from the nature of the cases and questions—those being similar in all the cases, and nothing in either case that could prejudice either Insurance Company. It being proper to make the consolidating order, it follows that it was not error to refuse to set it aside.

As to the 3d assignment of error.

We submit that when the actions were so consolidated that the matter of impanelling a jury was to be proceeded with as in any case, and section 819, page 152 R. S. of U. S. 1878, is we submit applicable, and limited the parties to three challenges. See also 1 Thompson on Trials, Section 46 and Note 1.

If each plaintiff in error was entitled to three peremptory challenges, then of course defendant in error would have been entitled to the same number; so that twelve jurors, equivalent to a full panel, could have been peremptorily challenged without the consent of either certain one of the defendants; or if each plaintiff in error was entitled to three peremptory challenges and defendant in error to only three then in addition to this favor being three to one against defendant in error each defendant might have been required to see half of a full panel peremptorily challenged off in addition to the six challenges allowed by said section 819.

We submit that practically there was but one case—a consolidated case—for trial. The cases were to be tried so far as practicable as one case. Said section 921 of the laws of Congress authorized the Court so to consolidate those three cases—that consolidation was the act of the Court. Surely it would not be just for one party to thereby get an undue advantage, which the plaintiffs in error would have had if they together could challenge nine jurors, to defendant in error challenging only three or one-third as many. And we claim that the consolidated case became one case because of the consolidation and the words plaintiff and defendant are not to be construed differently in such cases as this than in any other case.

It will by reference to pages 58, 161 and 254 of the printed record

be seen that plaintiffs in error had before exercising any right to challenge, obtained a ruling to the effect that they all together could have only three peremptory challenges, and as they were respectively represented by the same attorneys, Messrs. J. W. Green and George J. Barker, there could not be any reasonable cause for difference between the plaintiffs in error as to the manner of their exercising such rights of challenge. They were practically in the situation of plaintiffs and defendants in ordinary actions.

As to the fourth assignment of error:

The question there referred to appears by the bill of exceptions (Q. 33, page 60) to have been answered by the witness saying "The hunting up and locating a cattle ranch," which evidence was explanatory of how the witness Brown and the decedent Hillmon came to be together at the time and place where Hillmon was kilied, and was, we submit, under the issues, competent and relevant on the questions as to whether the killing of the person whose corpse was shown was accidental—or intentional in pursuance of a by the Insurance Companies alleged conspiracy—as well as for other purposes.

As to the fifth assignment of error:

We submit the objections of defendant in error there referred to and set forth after Q. 338 on page 60, which objections are set forth on pages 60 and 61, were properly sustained. That question and the answer thereto, were set forth in the deposition referred to on the second line of that page 60; and if the answer was a proper one to have been admitted, it should, we submit, have been set forth in the bill of exceptions. Not being there set forth we submit this Court cannot consider the question of that fifth assignment of error. But whether it can be considered or not, as we understand that question, we submit it would be practically impossible to frame a question more objectionable as calling for incompetent and irrelevant testimony. We submit it was not at all competent or relevant for an interview in the office of one of the attorneys for plaintiffs in error, George J. Barker, with Brown, the witness, to be given in evidence, even if a postal card, from some stranger to another stranger to the case was there present, no matter what the inquiries were. There is nothing in the case to show that such question could call for anything contradictory to anything that the witness had before said. And even if all such objections were bad, still, as the question was an entire

one, we submit that it was not competent thus to get before the jury evidence of the contents of a postal card from one stranger to the case to another, and certainly not without having shown that the postal card was lost or could not be produced to show for itself what it was if it was pertinent to prove it. In this connection we also refer to what is herein said in relation to the 74th, 85th and 86th assignments of error.

As to the 6th, 7th, 8th, 9th, 10th, 11th, 12th and 13th assignments of error on pages 91 to 93 relating to the affidavit of John H. Brown, we think those assignments of error may be considered together, and refer to the questions number 1244 to 1268 on pages 61 to 65 to show those questions and Brown's answers thereto respectively as contained in Brown's deposition; and we refer particularly to the statement set forth in the bill of exceptions at page 65, in the words following:

"The objections to questions 1244 to 1268, inclusive, were sus-
"tained on the ground that it appeared that the original affidavit
"signed by Brown was in existence and in possession of defendants'
"counsel, and that therefore it should have been produced and
"shown to the witness, and that the copy in the deposition could
"not now be read to the jury whilst the original was at hand and
"capable of production; to which ruling the defendants excepted,
"and thereupon defendants' counsel for the present withdrew said
"questions and answers, with leave to again offer same. On the
"day following defendants' counsel offered to read said copy of
"said affidavit and the questions and answers based thereon to the
"jury; but the Court held that the same could not be read unless
"the defendants produced the original affidavit; to which ruling
"the defendants duly excepted.

"Be it further remembered that subsequently the original affi-
"davit was produced by defendants' counsel and read in evidence
"to the jury."

This statement shows the objections to those questions were sustained because the Insurance Companies were trying to get in secondary evidence, they having the affidavit there referred to there in court in their possession, notwithstanding it had been torn up and thrown into a stove. The fact of its having been torn up and thrown into a stove (it at the time of those objections being in court in the possession of the attorneys for the Insurance Companies), was of course not sufficient to authorize secondary

evidence thereof, as by producing it it would show for itself what it was; and then of course after it was presented in evidence any proper question could be asked in relation thereto. But as the Insurance Companies chose to withhold it, we submit it was not error in the Court to refuse to permit them to ask any of those questions until they should first produce the affidavit.

And further, by the last above copied part of page 65 it is shown that the Insurance Companies by their counsel after those rulings were made, withdrew the questions and answers, those in the 6th to the 13th assignments of error referred to, and afterwards, on the day following, offered to read the copy of said affidavit and the questions and answers based thereon, but the Court held that the same could not be read unless the defendants produced the original affidavit. And afterwards, said Insurance Companies produced and read said affidavit in evidence, which of course shows for itself what it was and its contents.

The exclusion and ruling of the Court complained of, was in effect, only conditional, to-wit: requiring the Insurance Companies to first produce the affidavit, and having so produced and read it, there was then no ruling against them on that matter, and of course they cannot assign error thereon.

From page 43 to 54, particularly the eighth line from the bottom of page 46, if that part of the record can be considered, it will also further be seen that the said statement (torn affidavit) was read to the jury, and from the last paragraph on that page 46 and the top of page 47, as well as other parts of said page 47, it will be seen that the whole affidavit not only was read, but testimony of John H. Brown in relation thereto was also read—we suppose that is enough to show that said ruled out part of Brown's deposition was finally read to the jury, but whether so or not, the same as above shown was only ruled out contingently as aforesaid—and the contingency was complied with when the Insurance Companies' attorneys finally chose to produce and read the affidavit (p. 65) notwithstanding it had been torn and thrown into Buchan's stove.

As to the 14th to 24th assignments of error, on pages 93 and 94 relating to the testimony of Dr. Simmons, set forth on pages 65 to 69:—We submit it was competent to prove by Dr. Simmons that he was accquainted with John W. Hillmon in his life time; that he attended him as a physician in the matter of looking after an injury

on Hillmon's nose; that the place of that injury corresponded to a mark on the nose of a photograph of a corpse; and also for the witness, being a physician, to state the probable result of such injury with reference to decomposition of a corpse so far as interrogated on those subjects.

And we also submit that it was competent for plaintiff to try to identify the corpse as being the body of Hillmon by the photographs, and for the witness to state as a reason why he could not so identify, that the change in the natural appearance was too great for him to do so; and the witness's failure so to identify the corpse was not cause for assignment of error.

The pictures of the corpse were fully identified by the artist who made them; and we suggest it was entirely proper to submit such identified pictures to the witness, Dr. Simmons, to enable him to illustrate to the jury the location of the injury he treated on Hillmon's nose. A plan or a picture whether made by hand of man or by photograph is admissible in evidence, if verified by proof that it is a true representation of the subject to assist the jury in understanding the case, in this case to assist the jury with reference to the controversy as to whether the corpse was the corpse of Hillmon. Of course it was competent for the witness, Simmons, to identify the pictures marked exhibits C and H as pictures of Hillmon.

As to the 25th to 30th assignments of error on page 94 relating to the testimony of Reuben Brown on pages 69, 70, 71 and 72—

Those six assignments of error refer to the fourth and fifth questions on page 70 and the 10th, 11th and 12th on page 71 which questions with their answers are in the words following:

Q. State what conversation you had with Mr. Buchan at that time, at his office? A. He told me—he asked me where my brother John was. I told him I didn't know. "Well," he says, "I want to know where he is; I want to see him;" and I told him that I didn't know, but that I could go and look for him.

Q. What was said about any trouble that he was in, if anything? A. Well, he said he had heard that he had got into trouble and he wanted to get him out of it; that he had been employed by my father and brother to get him out of this trouble, and he wanted I should hunt him up; and I told Buchan where he started to, and I said I would go down and hunt him up and bring him back, so he could have a talk with him. That is about the sub-

stance of the conversation. That is about what was said at that time.

Q. State what it was. What did he say to you and what did you say to him? A. Mr. Buchan said that John was very firm in this matter, and that he ought to do something; that he was liable to be arrested at any time, and that he was doing it for his own good, and that he didn't get anything for this work; that he wanted to get him out of trouble, and he wanted me to go and talk with him and tell him just how it was and get him to make a statement different from what he had made; that the deputy sheriff was there, and he didn't know, if John didn't do something, what might turn up. That was about the words.

Q. What did you say in reply to that? A. He said that he wanted to get John out of trouble. He was doing it for his own good, and if he didn't make a different statement from what he had made he would put himself into trouble.

Q. When John left your house and rode away with your horse what did he go for? A. He went down to work.

This testimony of Reuben Brown tended to show that the W. J. Buchan whose name is signed as a witness to the releases set out in the aforesaid answers, improperly induced John H. Brown to make the aforesaid affidavit. Reuben Brown was the brother of John H. Brown as shown on pages 69, 70 and 71 referred to in the fourth line from the bottom of page 59. From the issues joined between the parties by their said answers and replies, and from the statement in the bill of exceptions on page 59, as well as from what appears to be instructions to the jury on pages 43 to 54, it will be seen that on the part of the defendant in error it was claimed that the Insurance Companies had fraudulently and without any consideration obtained those releases; and the evidence objected to in the said 25th to 30th assignments of error is a part of what defendant in error claimed tended and was competent to show such fraud, and also to be considered in connection with the effort of the Insurance Companies to contradict John H. Brown by that affidavit.

We think it will be apparent to the Court from the testimony that the case was tried on the theory on the part of the plaintiff that Buchan was the agent of the Insurance Companies pretending to John H. Brown and Reuben Brown, his brother, to be advising for the benefit of John H. Brown, when in fact he was the agent

of the Insurance Companies to procure the releases for them, and getting the affidavit of John H. Brown as a means to assist in procuring the releases. The last paragraph on page 59 shows that the plaintiffs in error paid Buchan for getting that affidavit and the releases plead in the answers.

As the Insurance Companies relied on the affidavit of John H. Brown, and introduced it in evidence as aforesaid, and accepted the releases so plead, and relied on the same, they take the same subject to all the means by which they were obtained, and burdened with the fraud by which they were obtained, including, of course, any fraud or deception practiced by Buchan. And this renders it competent to prove what Buchan said to any person helping him to obtain said affidavit and releases to induce such person so to help; and also to offer any proof tending to show whether John H. Brown made that affidavit or statement voluntarily, or was induced so to do by Buchan, a person paid by the Insurance Companies to secure the same, by the use of fraud or deceit brought to bear upon him through his brother.

And the testimony complained of was competent and proper matter to be considered by the jury in connection with the effort of the Insurance Companies to contradict and thus discredit the witness, John H. Brown, by means of this statement or affidavit, that being the purpose for which they read the same to the jury.

See page 59. One of the questions in the case was whether Hillmon was accidentally killed by Brown as shown by evidence referred to on page 59, or whether the corpse was that of some other person as stated in said affidavit so obtained from Brown by Buchan.

That the Insurance Companies ratified and adopted Buchan's acts by using the statement and releases, see

American Fur Co. vs. U. S., 2 Peters, 358.
Xenia Bank vs. Stewart, 114 U. S., 228, 229.
Elwell vs. Chamberlain, 31 N. Y. 611, 619.

In this connection we refer to the foregoing part of this brief which relates to the 6th to the 13th assignments of error and to the part hereof which relates to the evidence of W. J. Buchan set forth at pages 79, 80 and 81, hereinafter set forth in the subdivision hereof relating to the 63d and 64th assignments of error, and also to the said statement at page 59. From the matters referred to and from the testimony of Reuben Brown, pages 69 to 72, it will

be seen that W. J. Buchan at the instance of and for pay from the Insurance Companies, got John H. Brown to make the affidavit set forth at pages 61 to 63, which was read to the jury as shown at page 65.

It is apparent that said affidavit would help Buchan to get the releases as plead in said replies; and, as indicated by questions asked him on behalf of the Insurance Companies, it had been shown by other testimony than any set out in the bill of exceptions that such use was made of it.

As to the 31st, 32d and 33d assignments of error on page 94, relating to the testimony of Levi Baldwin referred to on pages 72 and 73—by reference to the aforesaid pleadings, answers of the Insurance Companies, (pages 12, 13—138, 139, 140 and 219, 220, 221) it will be seen that the Insurance Companies claimed that Levi Baldwin and others conspired, &c., to fraudulently procure the insurance policies sued on and palm off the corpse of another as the dead body of John W. Hillmon, and that evidence other than any set forth in the bill of exceptions was given relating to those matters (see the above copied part of the statements in the bill of exceptions page 59). We submit that because of the issues so tendered by the Insurance Companies and the evidence given, that it was proper for Levi Baldwin to explain his connection with the whole matter. It would appear from said page 59 that the plaintiff sent Levi Baldwin and Alva Baldwin to Medicine Lodge, Kansas, where it appears from same page 59 that the body had been buried, and that the Insurance Companies also sent Theo. Wiseman and Samuel Walker to the same place where the body was disinterred and taken to Lawrence, Kansas.

As to the 34th, 35th, 36th, 37th and 38th assignments of error on pages 94 and 95 relating to the testimony of John Eldridge referred to on pages 73 and 74.

By reference to the above copied part of the statement in the bill of exceptions on pages 59 and 77 it is shown that there was evidence given tending to show the pecuniary condition and ability of said Hillmon at the time he took out the insurance on his life. Those assignments of error were to evidence showing he had some quantities of money about the time he took out the policies.

And the evidence thus objected to was we submit competent and relevant to support defendant in error's denials made in each reply by her general denial therein of the allegations in the afore-

said pleadings, answers of the Insurance Companies, so far as they alleged conspiracy, fraud, etc., in the matter of the procuring of the policies.

From the fact that the Court permitted that evidence, it is plain that the Insurance Companies were claiming Hillmon was not able financially to take the insurance.

Barbour County, Kansas is situated in that part of the State of Kansas invaded by hostile Indians in 1878 as shown by public history as well as by the resolution of March, 1879, of the Senate and House of Representatives of the State of Kansas set forth on pages 966 and 967 of the 1st G. S. of Kansas, 1889, wherein it is recited:

"WHEREAS, A large body of hostile Indians invaded the State and passed across the same during the year eighteen hundred and seventy eight; and

"WHEREAS, Said Indians committed many murders, and destroyed much property belonging to citizens of this State; therefore, etc."

This fact of which the Courts will take judicial notice offers a reason why John W. Hillmon, then a recently married man took out more insurance than he expected to permanently carry as indicated at page 75.

As to the 39th, 40th, 41st, 42d, 43d, 44th, 45th and 46th assignments of error on page 95, relating to the testimony of defendant in error set forth on pages 74, 75 and 76 in the words following, to-wit:

"Be it further remembered that thereupon the plaintiff, to further sustain the issues on her part, testified in her own behalf, among other things, being first duly sworn, as follows, it being shown that A. L. Selig was the agent of the Connecticut Mutual Life Insurance Co., to whom the policy sued on was sent for delivery:

Q. Are you acquainted with Mr. A. L. Selig, who resides in Lawrence? A. Yes sir.

Q. Did you go to Mr. Selig's office to see him at any time after your husband, John W. Hillmon, left the last time and before his death? A. Yes sir.

Q. How did you come to go to Mr. Selig's office? A. He sent me a note to call at his office.

Q. About what time was that? A. It was some time in March; from the 10th to along about the 15th of March.

Q. What time of the day did you go to his office? A. I think it was in the afternoon.

Q. Did you have any conversation with him there at that time? A. Yes sir.

Q. In relation to what matter? A. To a policy.

Q. In relation to one of the policies in this suit? A. Yes sir.

Q. Where was that policy? A. He had it.

Q. In whose hands? A. Mr. Selig.

Q. Now, then, what was said between you and Mr. Selig in relation to the policy? A. I think it was the Connecticut Mutual.

Q. Was the policy in the hands of Mr. Selig at that time? A. Yes sir.

Q. From whom did you receive that policy? A. Mr. Selig.

Q. At that time? A. Yes sir.

Q. What was said between you and Mr. Selig in relation to the policy at the time you obtained it? A. I went to his office and he told me that the policy had come, and he offered it to me. I told him no; that my husband had written me—

Q. Have you got that letter? A. I think so.

Q. Go on and state what you told him. A. I told him my husband said I could call and get the money and not take the policies; that he would be home in a short time and he could not carry those policies, and Mr. Selig said that I had better take the policies, because if any accident should happen—him out in that wild country that I would have that much more money, and if I should cancel it it would be only a small amount at the present time and it might be of great use by and by.

Q. What did you reply? A. I told him I would prefer the money, and he said no; I had better take his advice and keep the policy.

Q. What did he say about the premiums having been paid. A. He said it was all paid for.

Q. When you asked him to return the premium did he refuse to do so? A. Yes sir. He insisted that I should take the policy.

Q. What did he say? A. He refused to give me the money and told me to take the policy.

Q. What did you do? A. I took the policy."

We submit that that evidence was competent to prove payment of the first premium mentioned in the policy of The Connecticut Mutual Life Insurance Company sued on, set forth at page 209.

Section 122 of the code of civil procedure of the State of Kansas as set forth on page 620 of the compiled laws of Kansas of 1885 and on page 1251 of the G. S. of Kansas, 1889, is in the words following, to-wit:

"Section 122. In pleading the performance of conditions precedent in a contract, it shall be sufficient to state that the party duly performed all the conditions on his part; and if such allegations be controverted, the party pleading must establish, on the trial, the facts showing such performance."

Defendant in error in her aforesaid petition against that Insurance Company alleged the performance of conditions precedent as required by that section (see page 208 of the printed record), which allegation, under that copied section 122, would include allegation of payment of the premium.

That Insurance Company by its aforesaid answer (page 219) denied all the allegations in that petition, thus the matter of the payment of that premium was put in issue; and the testimony of said defendant in error so objected to was we submit competent to be considered in connection with the question as to whether the premium had been paid or not; and we also submit that the said evidence of the defendant in error was competent and relevant on the issue made by the allegations in the three aforesaid pleadings, answers of the Insurance Companies, in relation to the matter as to whether there was such conspiracy and fraud as alleged in those answers or not.

By said testimony it appears that defendant in error preferred the premium to the policy, and that would of course be competent evidence in rebuttal of such allegation of conspiracy and fraud.

The Selig referred to in that copied testimony being as there shown the agent of the Connecticut Mutual Life Insurance Company, having the policy for delivery so represented the Company that of course such conversation was competent as being between the defendant in error and that Insurance Company, that is, between her and its agent authorized to transact business on the subject matter of that conversation; and as that conversation took place at the time of the delivery of the policy it was we submit competent.

As to the 47th to 54th assignments of error on pages 95 and 96, relating to testimony of Henry S. Clark, referred to on pages 76 and 77—

From that testimony it would prima facie appear that evidence had been given of the height of John H. Brown and of the height of Henry S. Clark in relation to the identity of the corpse. Henry S. Clark was personally before the jury.

It will be seen from the above copied part of the bill of exceptions (page 59) that there was evidence tending to identify the body taken to Lawrence, as that of John W. Hillmon.

From the before mentioned pleadings of the defendants, their said answers, it will be seen that they claim that the dead body was the dead body of some person other than that of John W. Hillmon; and from the aforesaid pages 43 to 54, it will be seen that one of the prominent questions in the cases as tried by the parties was whether the dead body was that of John W. Hillmon or of some other person claimed by the Insurance Companies to have been one Frederick Adolph Walters.

See in this connection page 77, as well as other parts of the evidence herein mentioned, including that of Selig, Dr. Miller and Dr. Stewart—on which page 77 it is shown that the Insurance Companies offered evidence tending to show that body to have been that of Walters.

From all which we see that the said testimony of Clark went to the question of identity of the body with reference to his size and to the question of the pictures. It would appear from that evidence of Clark, that Mr. Green, one of the counsel who signed the aforesaid answers for the Insurance Companies, and who was, as shown on page 77, in court attending to the cases for the Insurance Companies had, whilst county attorney, at an inquest on the dead body, received the picture in which Hillmon and John H. Brown appeared together standing. That with further evidence, including that of persons showing loss of that picture, explained what became of the picture enough to permit Clark to testify in relation thereto so far as he testified on that subject; and we submit that the aforesaid evidence of Clark was competent and relevant on the question of the size of John W. Hillmon. And from other parts of the evidence herein referred to, it will be seen that the question of his size was a matter inquired into by the parties, and was by them—both sides—acknowledged to be a relevant matter. His height and size and the size and length of his foot were, as a matter of fact, important matters of controversy in the case with reference to the identification of the corpse as

being that of Hillmon. The question of the weight of the testimony of the witness Clark, which relates to the size of the foot, is an entirely different question from that of its competency.

As to the 55th, 56th, 57th and 58th assignments of error on page 96 relating to the testimony of A. L. Selig, referred to on pages 77 and 78—

We submit that the 55th assignment of error was in relation to mere heresay evidence struck out as shown on pages 77 and 78 and was therefore incompetent, as he was not able to testify as to the height of his own knowledge. Only so much was struck out as related to what he only knew on hearsay.

Surely nothing said by either John W. Hillmon, A. L. Selig or Dr. Stuart in the absence of defendant in error and stated at a time other than when a policy of insurance sued on was being procured or something done to procure the same, could be competent evidence. It would be mere hearsay.

And further Dr. Stuart was a witness as shown at the bottom of page 83 and testified at the trial to the effect that he measured John W. Hillmon in the office, therefore the Insurance Companies had in Court on the stand the very party from whom Selig got what information he had. Of course it was proper for the Insurance Companies to get their testimony direct from Stuart and not on hearsay.

If Selig could have told the height from his own knowledge that would of course have been competent.

As to the 56th, 57th and 58th assignments of error, we submit what other people did or did not do with reference to taking out insurance was not competent or relevant as matter of evidence. And further, on the matter of those policies, it appears from the statement at the top of page 79 that there was evidence tending to show that when the policies were issued the companies knew the amount of insurance applied for by Hillmon; and we request attention to the fact that there is not any pretence in the Insurance Companies' answers claiming that they did not know how much insurance there was on Hillmon's life. If the Insurance Companies had wanted to prove anything on the subject of too large an amount having been taken on the life of Hillmon they ought to have so stated in their answer and made allegations appropriate for such evidence as was thus ruled out. In this connection we refer to what we have above said in relation to the

Indian raid, and also to the want of anything in the case giving an excuse for the Insurance Companies attempting as shown by the question referred to in the 57th assignment of error to limit the value of the property of Hillmon to three or four thousand dollars.

As to the 59th to 62d assignments of error on pages 96 and 97 relating to the testimony of Mrs. G. A. Nichols referred to on page 79—

We submit that the talk referred to in the 59th assignment of error was mere hearsay in the absence of the defendant in error and was not competent; and inasmuch as the witness, Nichols, did not see any scar on his hand we submit there was no error in striking out that hearsay evidence.

As to the 60th and 61st assignments of error relating to the teeth of other members of the family we submit such evidence was both incompetent and irrelevant.

As to the 62d assignment of error we submit that the question there referred to called for hearsay evidence—a conversation when defendant in error was not present, and therefore not competent.

As to the 63d and 64th assignments of error, on page 97, relating to testimony of said W. J. Buchan, referred to on pages 79, 80 and 81, in substance, as follows:

"Be it further remembered that the defendants next produced "as a witness W. J. Buchan, who testified in part as follows:

"That he was a lawyer; was acquainted with John H. Brown, "his father and brothers; that in the latter part of March or first "of April, 1879, John H. Brown's father told him that John was "in trouble at Lawrence; he wanted him to look after him; that "witness further testified that he had two interviews with John "H. Brown—the first being in the latter part of April, 1879, or "possibly the first of May, this interview being at Lexington; "that at that interview John H. Brown detailed to him what he "claimed were the facts in regard to his and Hillmon's trip through "Southern Kansas, the same being substantially what was after- "wards put in writing; that he saw John H. Brown again a month "or more afterwards—possibly in June or July—at Parkville, "Missouri; that the witness went down to see Brown, in pursu- "ance of a conversation had with one of the attorneys for the de- "fendants, for the purpose of ascertaining what Brown's intentions "were; that he again saw Brown about the 4th of September,

"1879, in the neighborhood of Parkville, Missouri; that it was at "this interview that the written affidavit, signed by John H. Brown, "dated 4th of September, 1879, was made out and signed by Brown.

"Witness testified further to conversations had at these several "interviews with John H. Brown and to the circumstances lead- "ing to the execution of the written affidavit of September 4th, "his testimony tending to show that Brown made the statements "concerning the transactions set forth in the written affidavit vol- "untarily, and for the purpose of escaping trouble on his part, and "to prevent being prosecuted at the instance of the Insurance "Companies.

"Witness testified further that he subsequently met Mrs. Hill- "mon at Leavenworth, Kansas; that the following questions and "answers are part of his testimony:

"Q. State what took place between you and her in reference "to the signing of these releases. A. I had but very little talk "with Mrs. Hillmon up to that time about it. We went to the "Planters' House and got a room there, but I can't recollect the "talk. She was willing to do what she was doing; was willing to "sign these papers. She and John did most of the talking.

"Q. State whether you urged her to sign the releases or not. "A. No sir. She came there for the purpose of signing these re- "leases. Her mind was fully made up to sign them.

"On motion of plaintiff the Court struck out all of this answer "except the words 'no sir,' to which the defendants duly excepted.

"Q. I will ask you if you stated to her that she could never "recover in the cases, and that this would always be a cloud upon "her character and reputation. A. No sir. There was no such "talk as that at all.

"Q. What did you say, if anything, about your having taken "away her main witness? A. I never said anything about it. "There was no conversation of that kind at all. There was no "conversation between her and myself or Brown and myself as to "the policy of this or as to the reason for it. She came there to "sign those papers, she said, whatever papers were wanted to get "these policies, and she wanted John—rather insisted on John's "going with her down to Wheat's office to get those policies; but "John didn't seem to want to do it, and she and I went. There "was no argument nor no talk as to why she should sign those "papers.

"Q. Look at these releases—they are marked—and state "where they were signed. A. They were signed at Leavenworth.

"Q. By Mrs. Hillmon? A. Yes, sir.

"On cross examination witness testified that on one of the occa- "sions when he went to Missouri to try and see John H. Brown, "Samuel Walker was along; that Walker wished to see Brown, "and witness, at the request of Brown's father, went along as a "sort of guarantee that Walker would not arrest Brown nor make "any attempt to do so; and thereupon, in further cross examina- "tion, the following question was asked the witness:

"You could not prevent Walker arresting him if he wanted to? A. I don't know."

We submit that it was not error for the Court to strike out what could only have been the conclusion of the witness as to what defendant in error came there for. The words "no, sir" in the answer referred to in that 63d assignment of error, were not stricken out but remained, and further, the parts stricken out were not responsive to the question, but were volunteered by the witness.

As to the 64th assignment of error, which relates to the first question and answer on page 81 we submit that it was a very appropriate question to ask Buchan. He, Buchan, was the person who procured the instruments of release set up in the answers of the Insurance Companies, and with Brown witnessed the same.

In the last above copied statement (see page 79 and 80) it appears that he, Buchan, went to see John H. Brown at Parkville, Missouri, in pursuance of a conversation with one of the attorneys for the Insurance Companies for the purpose of ascertaining what Brown's intentions were; and from what is shown on those pages 79 and 80 and the above copied part of the testimony of Reuben Brown and the statement made on the aforesaid page 59 about the Insurance Companies paying Buchan, etc., it will be seen that it was matter of controversy at the trial of the cases whether Buchan pretending to act as attorney for John H. Brown induced him by fear and otherwise including the matter of seeing John H. Brown with officers, and thus trying to scare him into signing said affidavit. Why did Buchan go to see Brown in pursuance of a conversation had with one of the attorneys for the defendants for the purpose of ascertaining what Brown's intentions were as shown at bottom of page 79 unless he, Buchan, was acting for the Insurance Companies in the matter of getting that affidavit? And why

did Buchan do as shown in the statement at bottom of page 80 and top of page 81, that is, go along as a sort of a guaranty that Walker would not arrest John H. Brown or make any attempt to do so, and thus if he was really acting in the interest of Brown help to bring about an interview between Walker and Brown for such purposes as Walker, the representative of the Insurance Companies as shown on said page 59, would under the circumstances of the case like to have with Brown? And why did Buchan have the deputy sheriff with him when he got the statement? see pages 70 and 71. We submit that the above copied evidence and statements and such things as would naturally have been concomitant with them at the trial shows that the 64th assignment of error is not well taken. That question and answer threw light on the influences brought to bear on Brown to induce him to sign the before mentioned affidavit and rebutted Buchan's pretence that Brown voluntarily signed the affidavit. And we submit that it was relevant and competent on that matter; and from the bottom of page 59 we see that the Insurance Companies paid Buchan for procuring the affidavit and releases; and further in this connection we refer to the foregoing parts of this brief in relation to the 6th to 13th, and 25th to 30th assignments of error, and pages 59 to 65, concerning testimony of John H. Brown, and pages 69 to 72 concerning testimony of Reuben Brown.

As to the 65th, 66th, 67th and 68th assignments of error on page 97 relating to testimony of Dr. V. G. Miller referred to on pages 81 and 82, we submit that any statement made by John W. Hillmon was not competent evidence against defendant in error when made in her absence except only when he was acting as her agent either express or implied, and there is nothing to show he was acting as her agent in or about the matter of the evidence ruled out in those assignments of error, the 65th to the 68th. And surely Dr. Miller was not competent to write a statement that could be evidence against her. He testified, as shown on page 81, without any objection that Hillmon measured five feet and nine inches, but we submit that neither what he said nor what Hillmon said was competent evidence against defendant in error. That transaction would appear to have been had on the 17th of December, 1878, not at a time when anything was being done towards procuring any policy sued on. The memorandum sought to be introduced in evidence (page 82) which is in the words following:

"Copy of entry made by Dr. Miller in his Day Book:

LAWRENCE, KANSAS, December 17, 1878.

John W. Hillmon called upon me and reported a slight mistake in his height. He, Hillmon, is five feet nine inches in place of five feet eleven inches, as stated in his policy for life insurance in the New York Mutual.

(Signed) V. G. MILLER."

shows on its face if true that the policy of the New York Mutual had been issued. There was no such statement as shown by Miller's memorandum in the policy of that company, a copy of which is set forth at pages 3 to 5. That policy was issued on the 10th day of December, 1878. The application for the policies would be the place to look for a statement of Hillmon's height, made when he was acting in such manner that what he said when the applications were being filled up, would have been competent as *res jestae*. What he said when not applying for the policies, was, of course, incompetent hearsay. The matter of the height of Hillmon, was a question of fact, the papers made up of statements, commonly called the application for insurance, showed the therein stated height of Hillmon; they were in evidence at the trial. What either Hillmon or any person other than defendant in error said at any time other than when they were being made, was, of course, mere hearsay and incompetent.

Washington Life Ins. Co., vs. Haney, 10 Kansas, 525 & 535.

Reid vs. P. & A. Life Ins. Co., 58 Mo., 421, 425.

The F. M. Life Ins. Co., vs. Applegate, 7 Ohio St., 292 & 297–8.

Dodge vs. F. S. & T. Co., 93 U. S., 379.

As to the 69th to the 71st assignments of error on pages 97 and 98 relating to testimony of F. B. Good on page 83 —

We submit that the evidence thus sought to be introduced being the mere conclusion of the mind of that witness was not competent or relevant; and that it was not material to inquire whether there was any exhibition of grief or seriousness or not, or what her manner of talking was, in the opinion of that witness. Some people do one thing, some another; some appear one way, some another, under similar circumstances. How she appeared there, would, we submit, not help at all to determine whether her husband was dead or not. The question at issue for trial between her and plaintiffs in error, was in substance, merely, whether the assured was dead or not.

As to the 72d on page 98 in relation to the testimony of Dr. J. H. Stuart on page 83—

We submit it was not material how that doctor came to measure John W. Hillmon. He says he did measure him. How he came to measure him was we submit immaterial inasmuch as he measured him and knew his height as shown on page 83 of the record. We submit that was enough to enable him to tell how high he was.

As to the 73d to the 82d on pages 98, 99 relating to testimony of C. R. Walters on pages 84, 85 and 86—

As to the 73d assignment of error we submit that he could not have known, except by hearsay, how his father, mother and sisters regarded his brother Frederick Adolph, whether as being dead since receiving certain photographs or not. He, as shown on said page 84 testified that he has regarded his brother Adolph as dead since receiving certain pictures, photographs of the body, and he further testified in relation thereto as shown by the following part of page 86, to-wit:

"Witness is shown picture of the cadaver and asked: From the time you first saw those pictures in St. Louis, or those similar to that, up to the present time, have you ever entertained any doubt about their being the picture of your dead brother? A. I never had any doubt.

"Q. Have you any doubt now? A. No, sir."

And he was permitted to state how he had regarded his brother whether as being dead or not. But we submit it was not competent for him to tell how the others regarded Frederick Adolph. Of course that assignment of error does not raise the question as to what his father, mother or sisters had said on the subject. If they had said anything on the subject to bring the case within the rules of law in relation to evidence concerning what members of a family had said as to the death of another member at any time when what they said might have been evidence to prove the fact the case would be different. This was not an effort to prove what members of a family said, but was a mere effort to prove the operation of the mind of other persons than the witness—not what they said, and therefore we submit such question was incompetent, as well as because this was not a case in which pedigree could be thus proven.

As to the 74th assignment of error, which is with reference to the contents of a letter from Frederick Adolph Walters to C. R.

Walters, it will be noticed, on page 84, that the Court permitted the witness to testify that he had received the letter, who and where from; and that it was the last he had received from his brother, but merely refused to let him state the contents of that letter. As to that question, we will consider it together with the 85th and 86th assignments of error.

As to the 75th and 76th assignments of error, on page 98, relating to matter on pages 84 and 85, we refer to the following statement on page 84:

"Be it further remembered that thereupon, to further sustain "the issues upon their part, the defendants next produced as a "witness C. R. Walters, who, being first duly sworn, testified, "among other things, as follows:

"That he resided at Rich Hill, Missouri; was a brother of "Frederick Adolph Walters; that his father's family resided for "many years at Fort Madison, Iowa; that he last saw his brother "Frederick Adolph, at Holden, Missouri. He thinks it was in the "year 1878. Witness testified that he corresponded frequently "with his brother. And since 1879 he had received no letters "from his brother. Witness further testified that he had seen the "photographs of the body at St. Louis, they having been sent to "him by his father.

"Witness further testified that his relations with his brother "were of the friendliest character, and that the same was true of the "relations between his brother and the remainder of his family.

"Further testified that since receiving these pictures at St. "Louis, which, as he remembers, was in 1879, he has regarded his "brother Adolph as dead.

Thereupon, this further question was put to the witness:

"Now you may state, if you know, how the other members of "the family—your father, mother, and sisters—have regarded "your brother Frederick Adolph; whether they have regarded "him as being dead since they received those photographs.

"Witness gave further testimony describing the size, build, "appearance and characteristics of his brother Frederick Adolph.

"Witness further testified that he had received a letter from "his brother Frederick Adolph written from Wichita, Kansas; "that it was the last letter that he had ever received from him; "that he had made diligent search for the letter and was unable "to find it, and was satisfied that the letter was lost; that he re-"membered the contents of the letter in question.

"Thereupon defendants' counsel offered to prove by the wit-"ness the contents of the said letter; to which plaintiff objected "as being incompetent, irrelevant, and hearsay. Objection sus-"tained; to which the defendants duly excepted."

And we also refer to the before mentioned statement on page 59, as well as to the aforesaid pleadings, from which it will be seen that it was claimed Hillmon died in March, 1879, and that the dead body claimed to be that of Hillmon was taken from Barbour county, Kansas, to Lawrence, Kansas, in the spring of 1879.

We submit that the question mentioned in the 75th assignment of error and the witness's answers thereto, were fair matter of cross examination in relation to the matter he testified to as above shown for the purpose of contradicting him with reference to where he had received letters from; and his asserted ignorance as to where Topeka was, in his answer to that question, shown on page 84, would be matter for the jury to consider with reference to a witness who had resided at both Rich Hill and St. Louis, Missouri, as bearing upon both his credibility and capacity of knowing or remembering things.

And further as to the 76th assignment of error we submit that that was surely matter of cross examination with reference to his statement as to where he last heard from his brother. That was surely proper cross examination.

And further as to the 75th and 76th and also as to the 77th, 78th, 79th, 80th, 81st and 82d assignments of error pages 98 and 99, which relate to matters set forth at pages 84, 85 and 86.

As the whole of neither of the letters there (page 84) referred to are set forth nor any statement made to show to whom they were written nor how distinct the different parts of either letter were from other parts thereof—and as the ruled out clauses were certainly irrelevant—and as the other parts of one of those letters referred to tended to contradict the witness, we submit the same were competent so far as used.

There is nothing in the record to show but that all competent parts of the letter were read to the jury.

As to the 81st and 82d assignments of error we submit that the plaintiffs in error could not thus make statements of their own witness evidence in the case. They were but hearsay the same as the statement of any other person. The Insurance Companies called the witness and we submit they could not thus make his statements in his letter evidence.

As to the 83d, 84th and 85th assignments of error on pages 99 and 100 relating to evidence of Elizabeth Rieffenach, referred to on pages 86 and 87—

As to the 83d and 84th assignments of error we refer to what we have before said in relation to the 73d assignment of error and submit that the questions were objectionable for the same reasons that the one referred to in the 73d assignment of error was.

As to the 85th assignment of error which goes merely to the question as to whether the witness could state the contents of a letter referred to on page 87, we will consider that with the 74th and 86th assignments of error.

As to the 86th assignment of error on pages 100 and 101 relating to testimony of Miss Alvina Kasten referred to on pages 87 and 88—

It will be noticed that the envelope was introduced in evidence and that witness showed when and from whence she received the letter, but the contents of the letter were not permitted to be given to the jury, and as to that the Insurance Companies make their said 86th assignment of error. Considering that, together with the 74th and 85th assignments of error, we submit that the contents of the three letters referred to in those three, that is, in the 74th, 85th and 86th assignments of error respectively were incompetent and hearsay. They were not either of them written by Walters at a time when he expected to die; the statements therein were not made under the obligation of an oath, nor under circumstances in law equivalent thereto; nor under any such circumstances as would render or make them resgestae to any act or fact competent to be proven. Whether he did or went etc., according to any statement in either of those letters, or whether he had anything to do with any other person or whether he made, or had any transaction with any other person, or knew or had seen any other person named in either of said letters, were questions of facts to be proven as any otner fact, and his statement thereof or of any *intention* in any of said letters expressed, was not competent evidence against any other person whomsoever. Such statements were not res gestae of any fact, material or competent in this case, but only of the fact of writing the letters.

The contents of those letters were we submit not any more competent than a letter written by any other person from any place on earth to any other person on earth would have been

if such last mentioned letters had contained similar statements therein, or any other statement. Surely they were not more competent than a letter or statement from the Mayor of Wichita to the Mayor of Chicago would have been dated of the same date if in such letter such Mayor had stated substantially the same facts; all which matters of objection to those letters are shown by the following cases:

Ins. Co., vs. Guardiola, 129 U. S. 642; Letters, Civil case.

State vs. Medlicott, 9 Ks., 257; Dying declarations.

Simpson vs. Smith, et al, 27 Ks., 565, 574-5; Letter of 3d party.

State vs. Smith, 35 Ks., 618; Declaration of 3d party.

Dwyer vs. Dunbar, 5 Wallace, 318, 325; Letter of 3d party.

People vs. Fong Ah Sing, 64 Cal., 253-6; Dying declarations.

State vs. Draper, 65 Mo., 340.

Barfield vs. Britt, 2 Jones' Law, (N. C.) 41. In this case dying declaration as to cause of death were excluded when offered to support a plea of justification in a slander suit.

Leiber vs. Commonwealth, 9 Bush, (Ky.) 11; Dying declarations.

Lund and wife vs. Inhabitants of Tyngsborough 9 Cushing 41, 46.

Declarations of a physician made when he was examining injury, offered to show the nature and extent thereof not admissible as resgestae though he had since died.

Commonwealth vs. Densmore, 12 Allen 537-8; Dying declarations, etc.

1 G. on Ev., Secs. 156, 125.

Wharton Cr. Law, Ev. Sec. 278 etc.

Rex vs. Mead, 2 Barn & Cress, 605.

State vs. Shelton, 2 Jones (N. C.,) 360-4; Dying declarations.

As to the 87th assignment of error—

We submit it was not competent- certainly in the discretion of the Court not to permit evidence to sustain the reputation for professional integrity and standing of said W. J. Buchan on the part of the Insurance Companies who called him as a witness unless nor until his reputation should have been attacked by the other side, that is, by defendant in error by calling witnesses to testify in relation to his reputation—but as defendant in error did not so do, but simply relied on producing evidence which conflicted with what he said—therefore, we submit, the Court did not

err in sustaining the objection complained of in the 87th assignment of error.

We submit that there would not be any fair show for ordinary people to try law suits, if a man prominent in politics like Buchan —and we suppose him to have a national reputation—when his evidence came in conflict with that of some widow or poor laborer were permitted to call on the mighty ones of the land, those high in office and position like the judges of the Supreme Court, governor or railroad commissioner of a state—to help him before a jury, and thus to have his reputation sustained before it was attacked in that manner. We submit that the highest in the land must as to the question whether they tell the truth, stand on the facts of the case, without dragging in their political associates to help sweeten their character, unless the other side choose first to attack it with evidence *as to reputation.*

As to the 88th, which goes to the question as to whether the judgments were proper or not—

In addition to what we have before said, we submit that there is not error shown sufficient to reverse the same.

We request attention to the rule of law that revising Courts do not presume that the trial court erred, and in cases and on questions where further testimony or preliminary proof would have made questions preserved in the record proper to have been decided as they were decided by the trial court, the presumption in the revising court is, that such further testimony or preliminary proof was given, except only in cases where the contrary is clearly shown by some affirmative recital or statement in the bill of exceptions or otherwise.

These suggestions have application to many of the assignments of errors made by the Insurance Companies. And we submit that the presumption here is that such further or preliminary proof was made before the Court as would render its decision proper, if by preliminary or further proof such decisions could have been made proper, this as to all of the questions made other than where, if any such there be, the bill of exceptions make such full showing.

We submit that the several judgments in favor of defendant in error ought to be affirmed.

Dated this 2d January, 1892.

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